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INDIA LEGAL

December 19, 2022
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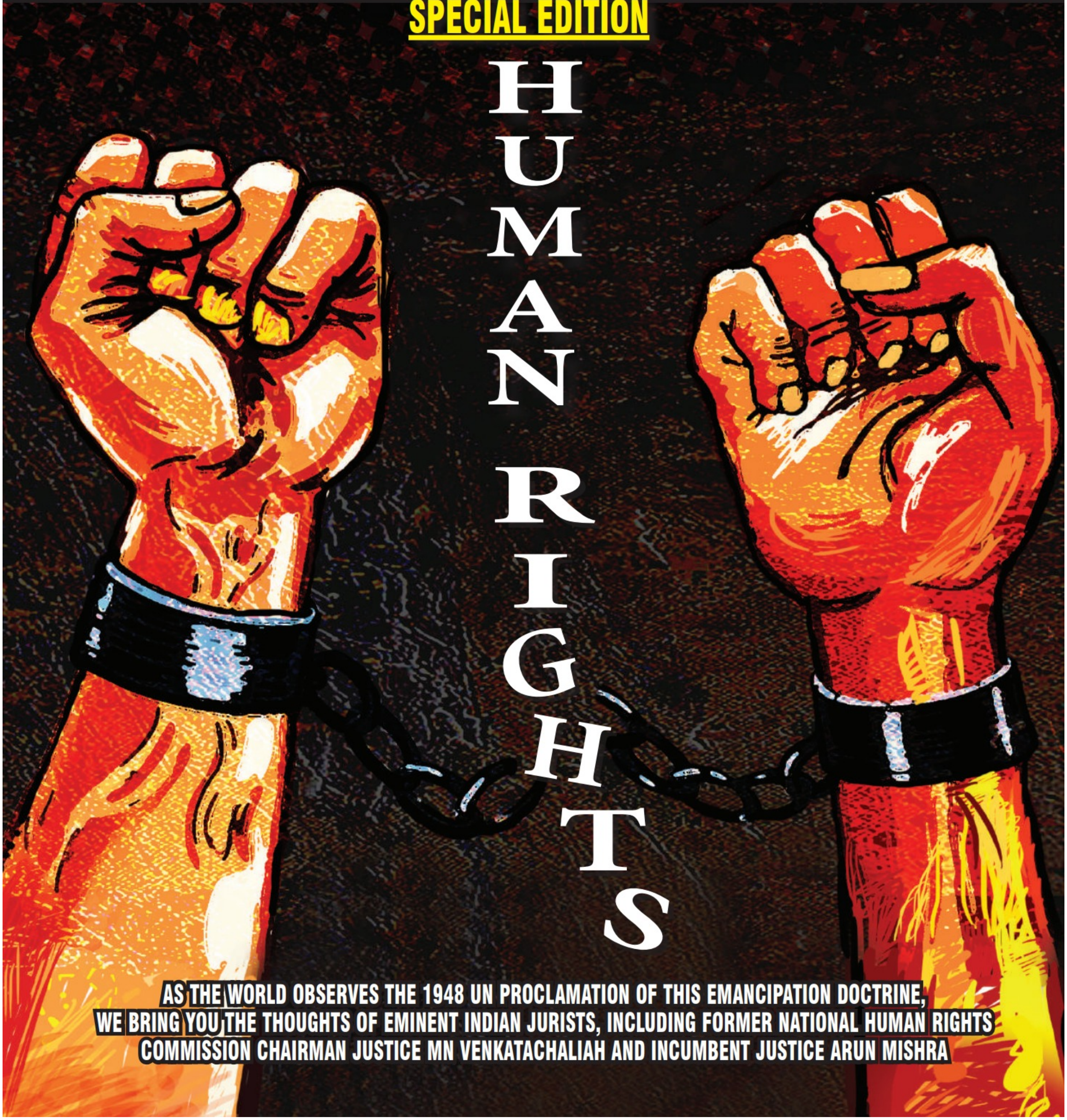
STORIES THAT COUNT

SPECIAL EDITION



HUMAN RIGHTS

AS THE WORLD OBSERVES THE 1948 UN PROCLAMATION OF THIS EMANCIPATION DOCTRINE, WE BRING YOU THE THOUGHTS OF EMINENT INDIAN JURISTS, INCLUDING FORMER NATIONAL HUMAN RIGHTS COMMISSION CHAIRMAN JUSTICE MN VENKATACHALIAH AND INCUMBENT JUSTICE ARUN MISHRA

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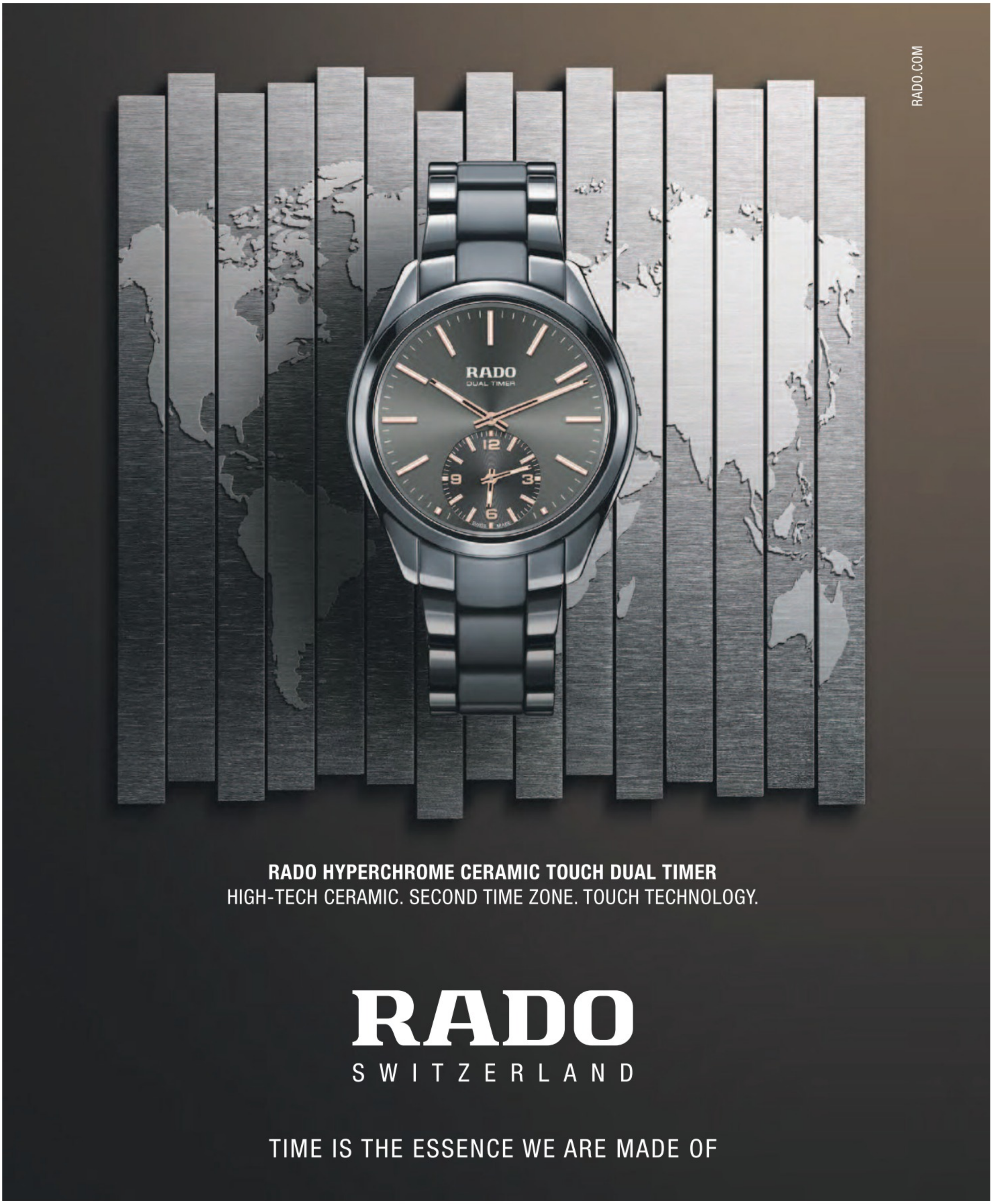

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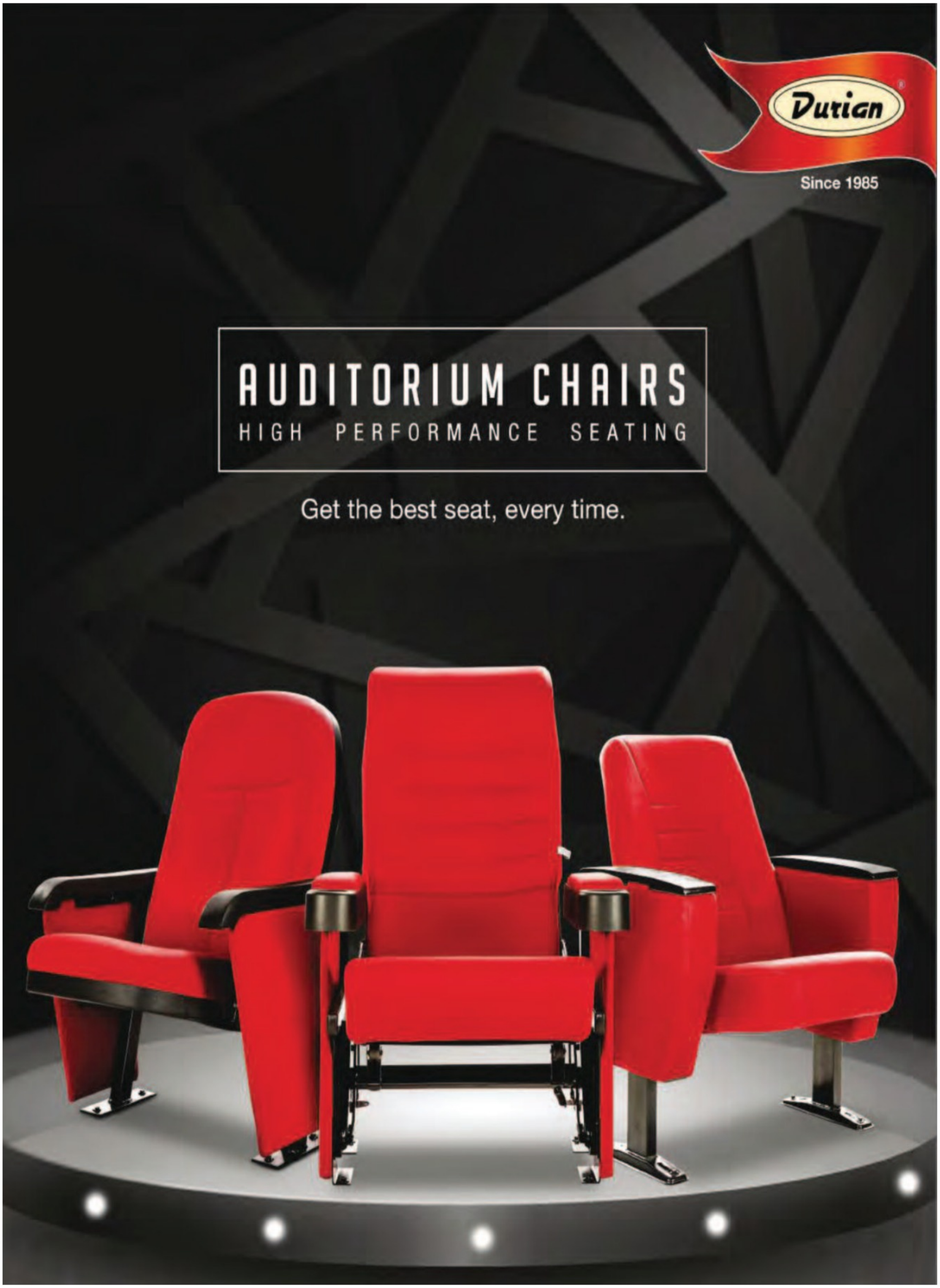
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DECEMBER 19, 2022

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Cover Design: **SHANTANU MITRA**

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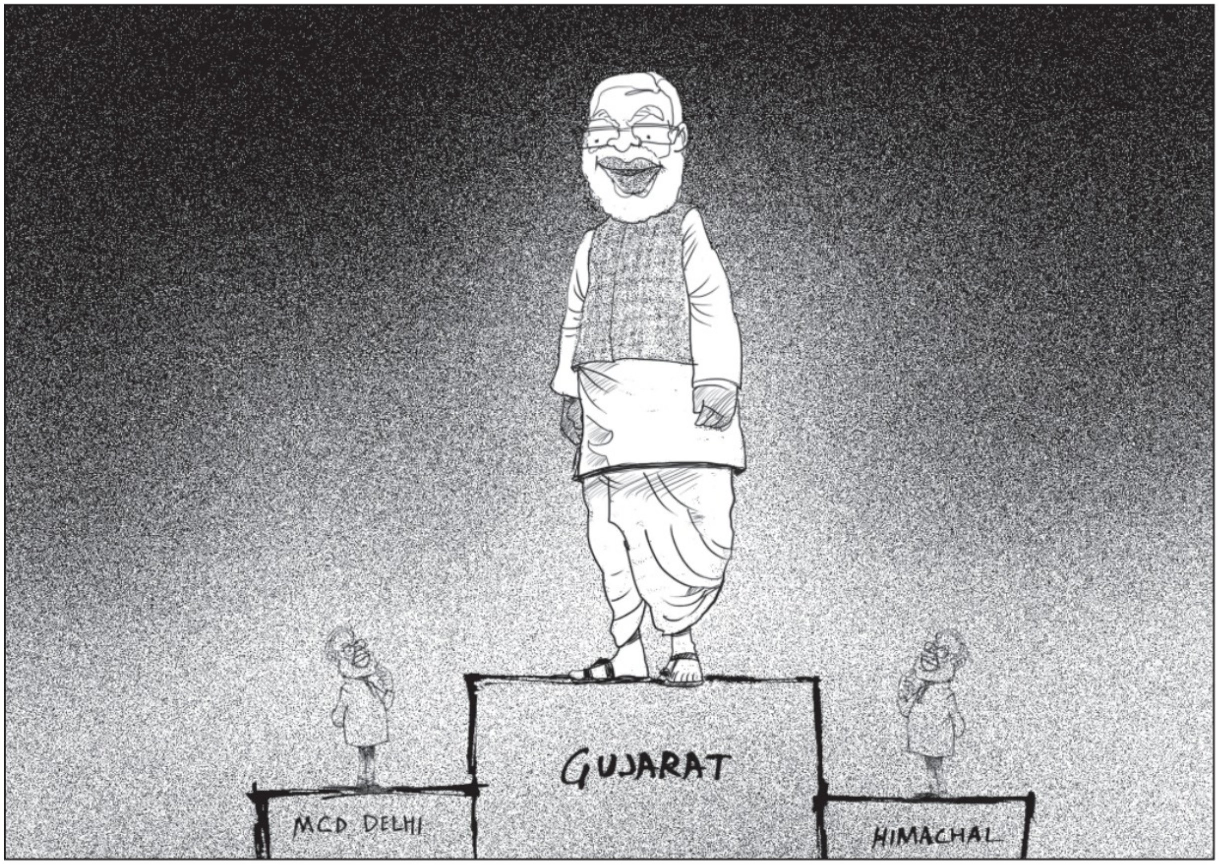
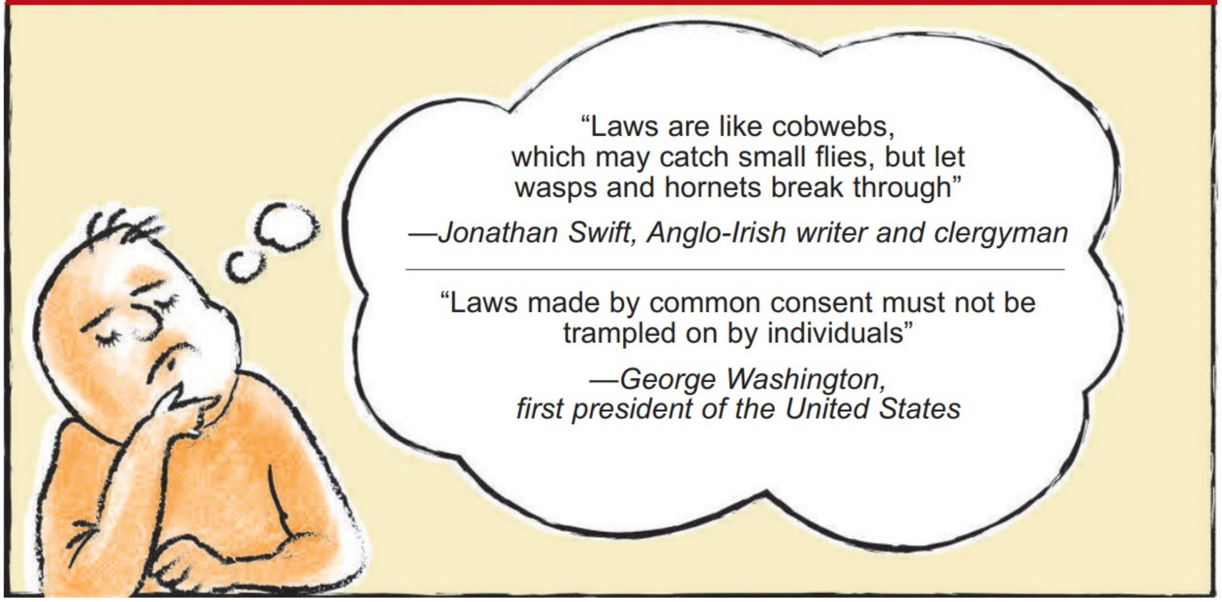
RINGSIDE

Shantanu Mitra



WORTH REMEMBERING



"Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through"

—Jonathan Swift, Anglo-Irish writer and clergyman

"Laws made by common consent must not be trampled on by individuals"

—George Washington, first president of the United States

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REMEMBERING DIGNITY

Inderjit Badhwar

DECEMBER 10th should be considered, along with all major religious landmark events like Diwali, Xmas, Eid, Gurpurab, Hanukkah, a day of reflection and the celebration of the power of the human spirit. In its own way, this date is a call to all humankind that they are endowed by their creator with the right to enjoy a life of joy and freedom from oppression. It marks the day the United Nations General Assembly adopted the Universal Declaration of Human Rights in 1948.

These inalienable rights—entitled universally, without discrimination—include the right to life and liberty, freedom from slavery and torture, freedom of expression and opinion, the right to work and education... and many more. These principles are a call to humankind to abandon the dark ages and gladiatorial and tyrannical savagery of absolutism and to awaken into a universe of freedom, of compassion, of justice.

Alas, this is only an ideal. The reality is that our much vaunted globalism is still plagued by war, terror, torture and tyranny, injustice, inequity, and inequality. That, however, should not deter us, if only for one day in a year, to remember that day in 1948 when women and men of wisdom blew the human rights bugle in a world organization and reminded us that life need not always be nasty, brutish and short.

In this special issue, *India Legal*, a magazine devoted to promoting the concept of universal access to justice, commemorates the importance of Human Rights Day, by inviting some of the nation's leading luminaries, many of them former chief justices and chairpersons of India's National Human Rights Commission (NHRC) to ruminate on this subject. I reproduce below excerpts from the thoughts they have conveyed to our magazine in interviews with our Roving Editor Sanjay Raman Sinha:

- **Former Chief Justice of India MN Venkatachaliah:**

Q: Figures from National Human Rights Commission (NHRC), say that violations have increased by around 37% between 2020-2021 and 2021-2022. As former chairman of NHRC, how do you see the current state of human rights in India?

A: You've asked me about the state of human rights in India. I recall an incident when an ambush journalist asked me: 'What is the state of Human Rights in India? Explain it in one word'. I said, 'Good'. And she queried again, 'If I asked you to explain it in two words'. I said, 'Not Good'. That sums up the dilemma of the discourse. The higher level of reporting to the National Human Rights Commission is perhaps an account of the greater trust and confidence NHRC has earned over time. Second, there might be greater awareness about human rights discourse amongst people. Third, there are increases in the violations of human rights.

However, the real human rights discourse is itself at a different level. In fact, people understand it only in a narrow sense. In a broader sense, it's a philosophy, and a way of civilised life.

- **Justice Arun Mishra, chairperson, NHRC:**

Q: What about the rights of uncounted thousands of undertrials languishing in prisons without bail and awaiting trial?

A: The sad reality is that despite the excellent work of our Legal Services Authority and increased public awareness of the law, we have been unable to provide competent advocates to poor prisoners. I believe that the Legal Aid Service Committee should provide competent lawyers to poor prison-

December 10 marks the day the United Nations General Assembly adopted the Universal Declaration of Human Rights in 1948. These inalienable rights include the right to life and liberty, freedom from slavery and torture, freedom of expression and opinion, the right to work and education... and many more. These principles are a call to humankind to abandon the dark ages and gladiatorial and tyrannical savagery of absolutism and to awaken into a universe of freedom, of compassion, of justice.

ers. The problem is that because these prisoners, particularly those from socio-economically disadvantaged sections or with limited resources, can rarely afford a competent advocate, they are frequently convicted even when there is insufficient evidence. The appeals are assigned to an *amicus curiae* or inept advocate. I've found that in the majority of cases, entrusting these matters to a qualified advocate would increase chances of ensuring fair, efficient and equitable justice. The situation is such that the person is acquitted and released 14-20 years after completing his sentence.

- **Former chief justice and fifth chairperson of the National Human Rights Commission Justice S Rajendra Babu is known for his initiatives against police brutality and capital punishment. His verdict in *Kishori vs State of Delhi*, delineating mob psychology, is noteworthy.**

Q: How do you react to the proposition that the National Human Rights Commission is a paper tiger and toothless body which needs to be empowered to make it function effectively?

A: NHRC is a body without powers to make decrees or enforce its decisions. Hence, some people call it a "paper tiger". However, my view is different—its role is not confrontational, but cooperative. If all stakeholders are involved in the process of recommendations and good governance which needs adherence to human rights, much can be achieved.

When children from Chhattisgarh were transported to Kashmir as prisoners by a contractor, I invoked the good offices of the two CMs, both belonging to different political parties, and they cooperated in getting their freedom. In Gujarat, after the incidents of 2002 many were dislocated from their places. While some wanted to settle down in their original place, others wanted to go to new places. Without going into the causes of the incidents, I sought the cooperation of the Gujarat government, which was extended wholeheartedly. The hallmark of good governance is to respect human rights, which all governments are aware of, but they need to be reminded often.

Post Script: These are only randomly selected quotes from lengthy interviews. There are many more that complete this issue devoted to a subject that can be the study of a lifetime. ■

RIGHTS FOR ALL, EVEN TREES AND RIVERS!

President Droupadi Murmu drew the attention of the Human Rights Day gathering to the new challenges created by climate change and said the rights of every animate thing must be protected

By India Legal Bureau

PRESIDENT Droupadi Murmu appealed to the National Human Rights Commission (NHRC) to look into the criminal justice system and ensure the rights of the undertrials are protected. Inaugurating the 74th Human Rights Day celebrations organised by the NHRC, President Murmu hailed the NHRC's initiatives against child labour and for the promotion of rights of the disabled and the LGBTQ. She noted that the NHRC, now in its 30th year, was making best possible efforts to spread awareness on protection and promotion of human rights.

President Murmu noted that the world observes December 10 as Human Rights Day every year to mark the adoption of the Universal Declaration of Human Rights (UDHR) by the United Nations General Assembly (UNGA) in 1948.

She said the declaration has been translated in more than 500 languages across the world, making it the most translated document in history. Recalling the key role of social activist and reformer Hansa Mehta, the only woman delegate to the United Nations Commission on Human Rights in 1947-48, the president said Mehta changed the phrase "All men are born free and equal" to "All human beings are born free and equal" in Article 1 of the Universal Declaration of Human Rights. Though this may sound like a minor correction, it had a major impact on the situation of women across the world. President Murmu said Hansa Mehta thus played an important role in drafting the UDHR.

Despite the Universal Declaration of Human Rights being around for so many years, President Murmu noted that human rights are still a work in progress in many parts of the world. "When we consider the sad developments that keep taking place in many parts of the world, we wonder if the declaration has been read at all in some of those languages."

She said the work done by India on promotion and protection of human rights has received international acceptance, including from the Global Alliance of National Human Rights Institutions. Stating that it was important to learn, rather re-learn, to treat

PRAISING NHRC'S ROLE
President Droupadi Murmu speaking at the 74th Human Rights Day celebrations organised by the NHRC in New Delhi

Mother Nature with dignity, the president said it was not only the moral duty of all citizens, but was also necessary for the survival of human beings.

President Murmu said one must develop sensitivity towards fellow living beings since it was the key to protection and promotion of rights for all. "It is essentially an exercise of the faculty of imagination. If we can imagine ourselves in the place of those who are treated as less than human, it would open our eyes and compel us to do the needful. There is a so-called 'golden rule', which says, "Treat others as you would like them to treat you". That sums up the human rights discourse beautifully," the President said.

The president noted that the UN has chosen "Dignity, Freedom and Justice for All" as the theme for 2022. She said that over the past few years, the world has suffered from a large number of natural disasters caused by unusual weather patterns. Climate change is knocking on our doors, President Murmu said. "People in the poorer nations are going to pay a heavier price for the degradation of our environment. We must consider the environmental dimension of justice now," she said.

The president said the challenge posed by climate change is so enormous that it forces us to redefine "rights". Five years ago, the High Court of Uttarakhand held that the Ganga and Yamuna rivers have the same legal rights as human beings. India is a land of sacred geography, with countless holy lakes, rivers and mountains. To these landscapes, the flora and fauna add rich biodiversity. "In old times, our sages and seers saw them all as part of a universal whole, along with us. So, just as the concept of human rights exhorts us to consider every human being as no different from us, we should treat the whole living world and its habitat with respect," President Murmu said.

The President said she wonders what the animals and trees around us would tell us if they could speak, what would rivers say about human history and what would cattle say on the topic of human rights. She said that we have trampled on their rights for long, and now the results are before us.

In his address, NHRC Chairperson Justice Arun Mishra said women worldwide continue to suffer various forms of discrimination due to social, customary and religious practices. The time has come to take care of the same by enacting legislative provisions to remove discrimination in inheritance, property rights, parental rights, domicile of married women, and legal capacity.

Justice Mishra said Article 44 of the Constitution, enabling equality by enacting a common civil code, should not remain a dead letter. Without providing dignity and equal rights to them, a celebration of the day is meaningless, he said.

"Human rights are inalienable. They take place in public discourse. Courts, while interpreting the provisions, remedy violation of rights in accordance with procedure established by law. Freedom from fear, suppression and oppression is essential. The freedom of speech and expression are supreme, which has to be exercised with responsibilities while protecting the dignity of others. Fulfilment of a promise of justice on the ground level is necessary for inclusive growth," Justice Mishra said.

To ensure justice to all, the system has to build a homogenous and productive society and spread awareness of available legal tools even to vulnerable sections, the NHRC chairperson said.

Justice Mishra said childhood needs to be protected. He noted that children's rights are being violated with impunity since we take false pride in putting a disproportionate education burden during childhood. The NHRC chief said the commercialisation of education is a cause for concern. ■

SOLEMN OCCASION
NHRC Chairperson Justice Arun Mishra with the president at the event. He said that to ensure justice to all, the system has to build a homogenous and productive society and spread awareness of available legal tools even to vulnerable sections

HATE
SPEECH

GIVE NHRC MORE TEETH

It's been almost 29 years since the National Human Rights Commission was formed. But it has a long, tough road ahead as is evident from the figures of rights abuses in India

By Sanjay Raman Sinha

DESPITE the United Nations charter, it took India decades to create an independent human rights body, the National Human Rights Commission (NHRC). Since then, it has acted as an ombudsman of sorts. However, it has no penal powers, only recommendatory ones.

For the past several decades, incidents of mob lynching, religious frenzy, violence and hate speech have infringed on the human rights landscape of the country. In such a situation, the importance of NHRC has exponentially increased.

Though our human rights situation compares better than other developing nations, violations in many areas are a matter of serious concern. One area is encounter deaths. The country has seen a 15% decline in encounter deaths between 2016-17 and 2021-22, but there has been a 69.5% increase in the last two years. In all the six years, only once has the NHRC recommended disciplinary action or prosecution in respect of "deaths in police encounters", according to the government's reply to the Rajya Sabha in March. Instead, the NHRC has recommended a total compensation of Rs 7.16 crore over the last six years. In 2015, the Supreme Court issued guidelines regarding police encounters, making it mandatory

For the past several decades, incidents of mob lynching, religious frenzy, violence and hate speech have infringed on the human rights landscape of the country. In such a situation, the importance of NHRC has exponentially increased. In many cases, NHRC performed well, but found itself helpless in many matters. Today, there is a need for a powerful and proactive NHRC.

to investigate every encounter. This investigation is done by an independent agency.

Another area of concern is lockup or custodial deaths, which have increased in the last one year. There have been 4,484 deaths in police custody over the last two years. These are government figures. According to the National Crime Records Bureau's 2021 report, Gujarat recorded the highest number of custodial deaths among all states and Union Territories for the second consecutive year. Between 2020 and 2022, in UP, 1,352 people died in custody. West Bengal was second, followed by Bihar and then, Madhya Pradesh. The police was also in the dock in cases of custodial torture and death, and the conviction rate was very low here.

In addition, prisoner rights are also under a cloud. India ranked sixth in the world with 75% of undertrial prisoners. Three out of every four prisoner was an undertrial awaiting justice and languishing behind bars. There were 3,71,848 prisoners in India whose trial has not even begun in court. Many are condemned to remain in jail due to lack of bail surety or some other reason. Recently, the Supreme Court expressed displeasure while hearing this matter. It asked states and Union Territories to collect information about all such prisoners who are still in jail after bail.

Even today, there are many laws which though made for national security are being so misused that they remind one of the Emergency era. Some of these laws are Unlawful Activities (Prevention) Act or UAPA, National Security Act or NSA, certain provisions of the Prevention of Money Laundering Act(PMLA) and Narcotic Drugs and Psychotropic Substances Act (NDPS).

Under UAPA, though the number of arrests decreased by 32% from 1948 to 1,321 in 2019, the number of convictions shot up from 34 to 80, an increase of 135%.

The NSA came into existence on September 23, 1980, during the tenure of Indira Gandhi and is still in force. The Act gives the right to arrest any person suspected of anti-national activity. Under NSA, a suspect can be kept in jail for up to 12 months without any charge. Of the total preventive detentions, 483 were under NSA, of which almost half (241) were either in custody or still detained as of 2021-end.

About 1,331 persons were detained under the NDPS Act. Figures of preventive detention are equally shocking. In 2021, these rose by over 23.7% compared to the year before. In 2021, over 1.1 lakh people were being placed under preventive detention. Clearly, detention is proving to be a scourge in terms of human rights.

In many cases, NHRC performed well, but found itself helpless in many matters. Herein, the need for giving more teeth to the body gains currency. Today, there is a need for a powerful and proactive NHRC which protects the rights of citizens in every situation. This, along with making the administration and the government more responsive towards the Commission, will help improve and protect human rights. ■

"A GOOD ADVOCATE INCREASES CHANCES OF FAIR, EQUITABLE JUSTICE"

As India celebrated National Human Rights Day on December 10, the spectre of human rights violations raised concerns. National Human Rights Commission (NHRC) Chairperson **JUSTICE ARUN MISHRA** spoke to **SANJAY RAMAN SINHA** in an exclusive interview and said he would never want the NHRC to have more powers as most of its recommendations are accepted

Sanjay Raman Sinha: **Police excess is a serious area of concern. The government told in the Lok Sabha that 4,484 deaths were reported in police custody, while 233 were killed in encounters in the last two years. What has the NHRC done in this regard?**

Justice Arun Mishra: You have suggested that 4,484 deaths took place in police lock-up. I'll divide this into two parts. Some deaths have happened in prison and some in police lockup, police stations and in police custody. The figure you have quoted is of two years; when we take the numbers that are available with us, then the figure of 2,021

"...to say that the majority of deaths occurred due to police torture is not correct. In the majority of cases, deaths which occurred inside jail premises were due to natural causes and suicides and our statistics show that in percentage terms, deaths inside jails due to natural causes was 86% in 2016. This increased to 88.8%, while the percentage of unnatural deaths decreased inside correctional homes."

shows that 1,889 deaths occurred in judicial custody, i.e. inside correctional homes and around 120 deaths took place in police custody which can be termed as deaths inside police lockup/police station, etc.

So to say that the majority of deaths occurred due to police torture is not correct. In the majority of cases, deaths which occurred inside jail premises were due to natural causes and suicides and our statistics show that in percentage terms, deaths inside jails due to natural causes was 86% in 2016. This increased to 88.8%, while the percentage of unnatural deaths decreased inside correctional homes.

Out of approximately 120 deaths in police custody, only 3 % occurred due to police excesses from 2015 to 2019. When the data for 2020-2021 is finalised, we will be able to state the number of deaths due to police brutality.

As far as encounters are concerned, the data registered in the Commission between 01-04-2021 and 31-3-2022, shows that 153 cases were registered and the majority were from states where anti-Naxalite and anti-terrorist operations were conducted. For example, data from J&K shows that 46 deaths occurred due to encounters during terrorist operations. Likewise, 18 encounter deaths occurred in Assam, four in Bihar, 31 in Chhattisgarh, nine in Jharkhand, eight in Odisha, 11 in Uttar Pradesh, two in West Bengal and three in Delhi. Many of these states are Naxalite-prone.

In addition, the data available with us reveals that in a large number of cases, police personnel also lost their lives in encounters. The data of 2020 shows us that 526 police personnel died on duty. Out of these, 70% occurred due to accidents, majorly in road accidents, 18% while the police personnel were on duty during anti-Naxalites and anti-terrorist operations and 5% due to riots and stone pelting incidents. After perusal of this data, to say that the deaths were due to police excesses inside police stations is definitely not true. It is clear that not a single person was tortured in judicial custody by the police/jail staff. In those cases where we find that a police torture or fake encounter took place, we take due action. Fake encounters are found to be minimal in this data. However, if any passerby gets injured in cross firing, the victim gets due compensation. Or if excessive force has been used and if it is found that the incorrect person was identified by the police or semi-armed force, compensation is granted.

When cases of torture or police beatings resulting in death occur, not only are departmental inquiries ordered, but criminal prosecution is also ordered against the accused and necessary orders are passed for compensation to be paid to the victim or family by state authorities. ▶

> "Jails are made for the purpose that there is no scope for the incarcerated prisoner to commit any offence. If the police or jail officers allow such offences to occur, then they should be held responsible. With regard to Tihar Jail, we have taken cognizance, and in other jails where such incidents have occurred, we will take cognizance, order a report, and send our investigation team. We have sent our Special Rapporteur to Tihar Jail, Delhi, and received a report, which we are currently deliberating."

केन्द्रीय कारागार तिहाड़ (दिल्ली सरकार)
संख्या- 1,3,5,6,7,8,9

SRS: You recently said that special laws like UAPA were enacted to protect human rights, not take them away. This is a strong indictment. Today, 124A (sedition law) is frozen and *sub judice*, but laws like UAPA, NSA, Sections of NDPS and PMLA are still open to misuse. Here, probe agencies, police and the government all share the blame. How can NHRC help and what can be done to stop the misuse of such laws?

Justice AM: First of all, the contention of yours that according to my statement, human rights are violated due to these acts is incorrect. That was not my statement. My statement was that these acts are made for the protection of human rights. It was in this context that UAPA, National Security Acts, NDPS Act, PMLA were enacted. The first three were made to counter Naxalite and terrorist operations which cause human rights violations, not only in the entire country, but the world over. Human rights violation is done mostly by terrorist acts. These laws were enacted to protect innocent citizens from wanton acts of terrorists/ Naxalites.

These acts are in consonance with United Nations conventions, which hold that such acts have to be made to protect innocent victims. The question of integrity of the nation is also involved. The UN says that those people who fund or support terrorist organisations via social welfares, charitable services or other similar ways should also be prosecuted.

It is also mentioned in the 1999 terrorist convention that prosecution of such persons should be undertaken. So UAPA was made in 1960; it's been operational for 70 years. The apex court has found the National Security Act constitutionally valid. As regards the NDPS Act, the problem of drug peddling is serious as the young generation is targeted. International cartels are involved in the operations. To curb drug peddling, the drug mafia needs to be given the strictest punishment. Only then can we protect human rights.

If innocents are prosecuted under these acts, judicial review in courts is available. The court will see whether *prima facie* such person is guilty or not; if not found guilty, he can be given bail and detention can be quashed as well. But it will be in judicial review by courts only. NHRC has no role in such proceedings of judicial review. And in sub-judice matters as well, we cannot interfere. But if the court ultimately rules that such a person is wrongly prosecuted, then

NHRC can grant adequate compensation and order action against concerned authorities for falsely prosecuting such persons. Even prisoners have human rights. It is correct to say that misuse of these acts must not take place. These acts are in place for the protection of human rights of citizens.

SRS: Recently, the NIA asked the centre to move serious offenders to jails in south India, as in jails in north India, there apparently exists a nexus between jail officials and criminals which lets them operate from jails. In Tihar jail recently, videos surfaced showing undue benefits being given to high profile prisoners. Prisoner riots and inmate violence also take their toll. Women prisoners also suffer. In this scenario, a change in the jail manual is needed. The Uttar Pradesh cabinet has already okayed changes in the jail manual. Does NHRC have any suggestions in this regard?

Justice AM: As far as the demand of NIA is concerned, there is a prior direction not to imprison dangerous prisoners in states where they cannot lead a safe life. They should be incarcerated in such states where they can live safely, where there is no danger and in conditions where there is no chance of jail break. In such a situation, the home ministry issued a direction on September 23, 2015, to send high-risk and high-profile prisoners outside the state where they are currently imprisoned.

Apart from this, as far as the jail manual is concerned (in 2016), after a lot of exercises were carried out, a model jail manual was prepared. Thereafter, the central government wrote to all states regarding this, asking that a model jail manual be adopted and reforms be initiated.

We have also deliberated on this issue very seriously and issued directions in the last year to bring reforms in the jail manual. Very old provisions (100 years or 80-year-old provisions) exist in various states; there is definitely a need for reform in jail manuals. Additionally, the states which have not updated jail manuals must do so. These should be made fool-proof so that there is an improvement in the condition of jails/prisoners and also in their discipline. This is absolutely necessary.

Secondly, with regard to the crimes being committed in jails, jails are made for the purpose that there is no scope for the incarcerated prisoner to commit any offence. If the police or jail officers allow such offences to occur, then they should be held responsible. Without their involvement, no such crimes can be committed in jails. With regard to Tihar Jail we have taken cognizance, and in other jails where such incidents have occurred, we will take cognizance, order a report, and send our investigation team. We have sent our Special Rapporteur to Tihar Jail, Delhi, and received a report, which we are currently deliberating. If any police officer is found to be complicit in such cases or showing favouritism to a prisoner (giving facilities, for example), he should be dismissed. There is a need to give them very serious punishments.

In jails, there should be no opportunity for prisoners to commit suicide. Most of the suicides that occur in jails are in the bathroom or latrine. We have done a study. We propose to issue directions that bathrooms and latrines be so designed that there is no opportunity for the prisoner to commit suicide. No one should provide materials like belts, etc. One third of deaths in jails are caused by suicides; here, too, reform is required.

Good food should be provided in jails, as well as good cells to live in. There should be an improvement in the living conditions of inmates and their habits. Additionally, it should be ensured that after serving their term, inmates should be able to live honourably and in the ordinary way. They should be rehabilitated. We have suggested that there should be yoga classes and they should be taught various faiths as per their choice.

SRS: The problems of undertrials are serious. Three out of four prisoners is an undertrial and the number is growing. The situation for poor, tribal and underprivileged is even more serious as access to justice is limited. Recently, President Draupadi Murmu appealed for ways to solve the crisis. What can the NHRC do in this regard? ▶

"We have deliberated on the issue of a model jail manual very seriously and issued directions in the last year to bring reforms in the jail manual. Very old provisions (100 years or 80-year-old provisions) exist in various states; there is definitely a need for reform in jail manuals. Additionally, the states which have not updated jail manuals must do so. These should be made fool-proof so that there is an improvement in the condition of jails/prisoners and also in their discipline. This is absolutely necessary."

> "Despite the excellent work of our Legal Services Authority and increased public awareness of the law, we have been unable to provide competent advocates to poor prisoners. These prisoners, particularly those from socio-economically disadvantaged sections or with limited resources, can rarely afford a competent advocate, they are frequently convicted even when there is insufficient evidence. The appeals are assigned to an *amicus curiae* or inept advocate."

Justice AM: The sad reality is that despite the excellent work of our Legal Services Authority and increased public awareness of the law, we have been unable to provide competent advocates to poor prisoners. I believe that the Legal Aid Service Committee should provide competent lawyers to poor prisoners. The problem is that because these prisoners, particularly those from socio-economically disadvantaged sections or with limited resources, can rarely afford a competent advocate, they are frequently convicted even when there is insufficient evidence. The appeals are assigned to an *amicus curiae* or inept advocate. I've found that in the majority of cases, entrusting these matters to a qualified advocate would increase chances of ensuring fair, efficient and equitable justice. The situation is such that the person is acquitted and released 14-20 years after completing his sentence. To ensure that poor prisoners' jail appeals or trials are expedited, the court must consider cases of this nature on priority.

SRS: It is felt that NHRC needs to have more teeth. In many instances, the need for more penal powers for NHRC is felt as then it can take disciplinary action. Do you think that the time has come for granting more powers to the Commission?

Justice AM: I would never want the NHRC to have more powers. The need is not there because 95-98% of our recommendations are accepted. We understand that our orders are strong enough and recommendations are treated as binding. There is no need for any additional powers. We have the power of investigation and can undertake them. We have a large investigation team and in cases where other institutions have failed, we have clicked. For instance, in Rajasthan, a woman's existence itself was denied. An investigation team went there on the order of the Supreme Court. The team not only found her existence, but found her as well. That's how well our investigation team performs.

SRS: You had expressed concern about the plight of mental health patients in hospitals across the country. There is a stigma attached to mental health which prevents their acceptance by the family. What can be done in this regard?

Justice AM: You have raised a topic which the Commission has been seriously working on. In the past 3-4 months, of the 43 mental hospitals all over India, 37 have been inspected and four have been visited by the full Commission. The first one was in Gwalior. After that, Agra and then two mental hospitals in Ranchi were visited. In the rest of the 33 hospitals, our Special Rapporteur and monitors were sent to collect reports and these have been received in proforma.

According to the Mental Health Act of 2017, it is essential that a mental patient has

the right to live in the community and should not be ignored by society. Another important provision is Section 19 which states that if the members of the family are not willing to accept him, then it is the responsibility of the State to keep him in a half-way home rather than placing him in a mental hospital. It is the duty of the State under Section 19 to help the resettlement of the patient in his family, provide him with free legal aid and help him so that he is accepted by the family to ensure that he enjoys his right to live with them.

But in Ranchi itself, around 300 mentally ill patients are in each hospital even after recovering and were not sent back to their respective homes. In Gwalior, such patients number 100, while 200 recovered mental patients in Agra were not sent back to their homes. The reasons provided mainly were that they didn't know the residential address of some of the patients. Another reason given was that the families were not accepting the patients. But the reality is far from this. When I enquired personally with these patients, I found that they were well aware of their residential addresses. They knew where their family was and where they were residing and they wanted to go back to their families.

Keeping cured patients in mental hospitals for several years is not legally permissible. Hence, all stakeholders must give serious consideration to the matter. The living conditions of metal patients are also deplorable. I believe that if the State, police, and mental hospital authorities make proper efforts, these patients could have been sent back home.

SRS: The rights of women cut across religious affiliations. Some personal laws seem to discriminate against them. There is a move to bring about a uniform civil code by different state governments. Will women benefit from it?

Justice AM: Gender justice is a key component of the United Nations' declaration of human rights. Respect for women has long been rooted in our culture. Hindu law has seen reforms that are supportive to women, including the Women Right to Property Act of 1937, the Act governing divorce case in 1956 and the Right to Inherit Coparcenary Property was given by an amendment in 2005. Muslim women have also spoken out against the prejudice in their personal laws.

The Constitution framers have included Uniform Civil Code (UCC) in the Directive Principles of State Policy. But even after 75 years of independence, we have not adopted UCC. The US, other nations and even the Indian state of Goa have a UCC. In essence, UCC encompasses the right to equality. Everyone is free to follow their personal laws and no one is prevented from following their religion. The issue is that there are two ways in which we should see personal laws. The first is temporal rights like property rights and secondly, religious beliefs ought to be kept apart. These temporal rights are equality rights, which form the basis of human rights and fall under UCC's purview.

SRS: The NHRC under your leadership has been pro active on the pollution menace. Recently, the chief secretaries of Delhi, Haryana, Punjab and Uttar Pradesh were asked by NHRC to give a report on ways to tackle pollution and ▶

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implement strategies of pollution control on a war footing. You said the time has come to even supervise the supervisory bodies for effective implementation of rules. What role do you foresee for NHRC in this area?

Justice AM: On matters of pollution, NHRC's hands are not tied at all. As per Article 51A of the Constitution, it is the duty of every citizen to protect the environment, care for other living creatures and preserve flora and fauna as well. Trees need to be protected as well. It's a sad state of affairs where the statutory laws made under the Directive Principles for municipal bodies are not being appropriately followed with regard to the duties imposed by them. There is a lack of attention on their part when it comes to cleanliness. In most places, we find that even garbage is not collected because they often lack the facilities to dump the garbage. There is also a lack of landfill sites and way to treat medical waste, construction and demolition waste, etc. They do not have any requisite facilities to treat, dispose or reuse. Secondly, sewer lines are not available in all cities. In various places, effluence from tanneries and other industries and sewage are directly being discharged into rivers. We have been successful in eradicating the practice of human carriage of excreta. We have prescribed it mandatory in our advisory dated 24.09.2021 that workers who undertakes hazardous cleaning of septic tanks should be provided safety gears, oxygen cylinders and protective glasses. Automatic alert lights detecting the presence of poisonous gases are to be installed in sewers/septic tanks. These precautions will prevent workers' death. Despite our advisory, only a few states have partly complied by providing safety gear. Mechanised cleaning of sewers and tanks are required by Bandicoot.

SRS: As chairperson of NHRC you have been elected as the member of the Global Alliance of National Human Rights Institutions (GANHRI) Bureau. What are your roles and responsibilities?

Justice AM: GANHRI's Executive Committee, i.e. Bureau, has the responsibility of implementing policies and resolutions of the General Body. It is the duty of the Bureau to ensure compliance and discuss whether some more resolutions need to be made. It is a responsible body from the perspective of policy making and execution. It's very satisfying that India's Commission will have its say too and can contribute in forming policies regarding human rights. It's a very important committee and we will try our best to perform its functions to the best of our ability. ■

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"WHEREVER THERE'S POWER, THERE'LL BE TEMPTATION FOR ABUSE"

The National Human Rights Commission (NHRC) has gained the trust of people and needs to rise to challenges, said its second chairman **Justice MN Venkatachaliah** in an interview with **Sanjay Raman Sinha**

Sanjay Raman Sinha: Figures from the National Human Rights Commission (NHRC) reveal that violations have increased by around 37% between 2020-2021 and 2021-2022. As the second chairman of NHRC, how do you see the current state of human rights in India?

Justice Venkatachaliah: I recall an incident when an 'ambush journalist' once asked me: What is the state of human rights in India? Explain it in one word. I said: 'Good'. She asked again: 'If I asked you to explain it in two words....' I said 'Not Good'. That sums up the dilemma of the discourse. The higher level of reporting rights abuses to the National Human Rights Commission is perhaps on account of the greater trust and confidence it has earned over time. Second, there might be greater awareness about human rights discourse amongst people. Third, there are increases in violations of human rights. However, the real human rights discourse is itself at a different level. In fact, people understand it only in a narrow sense. In a broader sense, it's a philosophy and a way of civilised life. I'd like to point to interesting developments in healthcare and maternal mortality. In the early 40s of the last century, the Bhore Committee reported that maternal mortality rates were 2,000 per 1 lakh childbirths. In the 1950s, the Dr Lakshmana Swami Mudaliar Committee recorded that the rates had come down from to 1,000; that was a remarkable decline, largely due to the invention of penicillin. Today, the number is less than 100. It is a remarkable achievement, especially in the progress of healthcare. During the 90s, a great scientist used to visit Africa and India—Sune Bergström. He was a Nobel laureate and invented a drug which controlled bleeding after childbirth. The remarkable human rights discourse is very comprehensive. There is what is called 'generational theory' and what is called 'wave theory'. Today, it is a remarkable combination of all disciplines that promotes human welfare. What is important is that the welfare measures the State brings forth must become accessible to all the intended beneficiaries. All the schemes must get wide publicity in every village. It must become right based, not mercy, welfare based.

SRS: **Today we have reports of human rights violations from the armed forces and paramilitary forces. The Armed Forces Special Powers Act is still in force in many states. Is there a case to bring both forces under the jurisdiction of NHRC?**

JV: It's a very difficult question. The legal structure of NHRC can't handle this responsibility of disciplining the army forces. A new system in which both the army and the NHRC participate can be thought of as a mechanism for supervision of violations of human rights by the armed forces and particularly under the Armed Forces Special Powers Act. There is a need for an effective system. Wherever there is power, there will necessarily be a temptation for abuse. It is in the very nature of power itself; every power tends towards excess.

SRS: **India has seen 813 cases of encounter killings between 2016-17 and 2021-22, with almost a 70% rise in the last one year, according to NHRC data. Is the NHRC capable of tackling the issue? If so how?**

JV: Encounter killings are a cruel joke on the philosophy of human rights and the very idea of rule of law. We cannot wait for all the civilisational changes and elevation of political culture to counter this menace. One suggestion, which jurists and legal philosophers might improve upon, is that every encounter killing be treated as homicide. It must be followed by a judicial inquiry to find out whether it is culpable homicide or justified homicide.

There is an interesting analogy in a case before the European Court of Human Rights, which I think was from Turkey. Somebody was killed in police firing which was thought to be justified by the State as the exercise of sovereign power by the government for maintaining law and order. In fact, the concept is that physical force is the monopoly of the State. The European Court of Human Rights, while upholding prerogative power whenever a death occurs by exercise of that authority, says there must be an in-built systemic mechanism for judicial inquiry into the death. If you don't have such a mechanism incorporated by law, then the system will not be conducive to human rights. Such a philosophy must be applied to be consonant with encounter killings.

SRS: **You headed the Constitution Review Commission and made recommendations for changes. What recommendations were made in the area of fundamental rights and how much change is feasible and necessary in today's scenario?**

JV: The Commission made a number of recommendations which it thought would promote constitutionalism and constitutional culture in the country. Two important recommendations that were made related to the stability of Parliament. Between 1995-2000, you know what happened in the matter of general elections and how many general elections were held.

One of the recommendations was to ensure that each Parliament would have an interrupted five-year period. The same philosophy was adopted by the UK in 2011 when it enacted the Fixed Term Parliament Act. We thought about this matter 20 years ago.

An interesting event took place in the mid-1980s in America. A committee was formed, sponsored privately by a group of about 200 retired governors, lawyers, professors, politicians and diplomats. They reviewed the working of the American Constitution for 200 years, and produced a report called, "Reforming American Government". Such exercises are necessary for all new democracies. However, that should be a non-governmental initiative. When the National Commission to Review the Working of the Constitution (NCRWC) was set up, an American professor who visited was enamoured by the idea and highly praised the philosophy behind it. But the philosophy of such periodic review, particularly if you are a new democracy, is important. More than the recommendations, the philosophy of the concept is eternally relevant. ▶

"The legal structure of NHRC can't handle the responsibility of disciplining the army forces. A new system in which both the army and the NHRC participate can be thought of as a mechanism for supervision of violations of human rights by the armed forces and particularly under the Armed Forces Special Powers Act."

"Encounter killings are a cruel joke on the philosophy of human rights and the very idea of rule of law. We cannot wait for all the civilisational changes and elevation of political culture to counter this menace. One suggestion, which jurists and legal philosophers might improve upon, is that every encounter killing be treated as homicide. It must be followed by a judicial inquiry to find out whether it is culpable homicide or justified homicide."

SRS: As the second chairman of NHRC, you enhanced its stature. Mary Robinson, then United Nations High Commissioner for Human Rights, had said that the NHRC of India is an example of what such a body can achieve even without express powers, if it is properly constituted. How did NHRC do exemplary work under your stewardship? Does it need more teeth now?

JV: Thank you for your compliment for the work that we did as a group, not as an individual. It is a collective effort. No individual can take credit for it. We had excellent officers and very dedicated people who had faith in the philosophy of human rights. As far as the teeth are concerned, if the NHRC has the power to enforce its own orders, it will be embroiled in perpetual litigation.

The whole philosophy of human rights is a cultural concept, a philosophical idea as to how the government responds to and implements the recommendations of a body like NHRC. It's not a parallel court to try criminal cases. There are criminal courts to try offenses. But the recommendations of the Human Rights Commission are at a cultural level. The culture of the State must be to respect the wisdom and moral authority of such institutions. If you make it a parallel court, it will lose all of its significance as a Human Rights Commission. It is a Commission, not a court. The argument of teeth is not appropriate in the context of the philosophy of such commissions.

SRS: In the current scenario, what challenges does the judiciary face in protecting human rights? For example, are changes needed in outdated/draconian laws (like sedition, UAPA, etc), judicial initiative to curb police excesses, handling hate speeches, judicial initiative for restraining the government...?

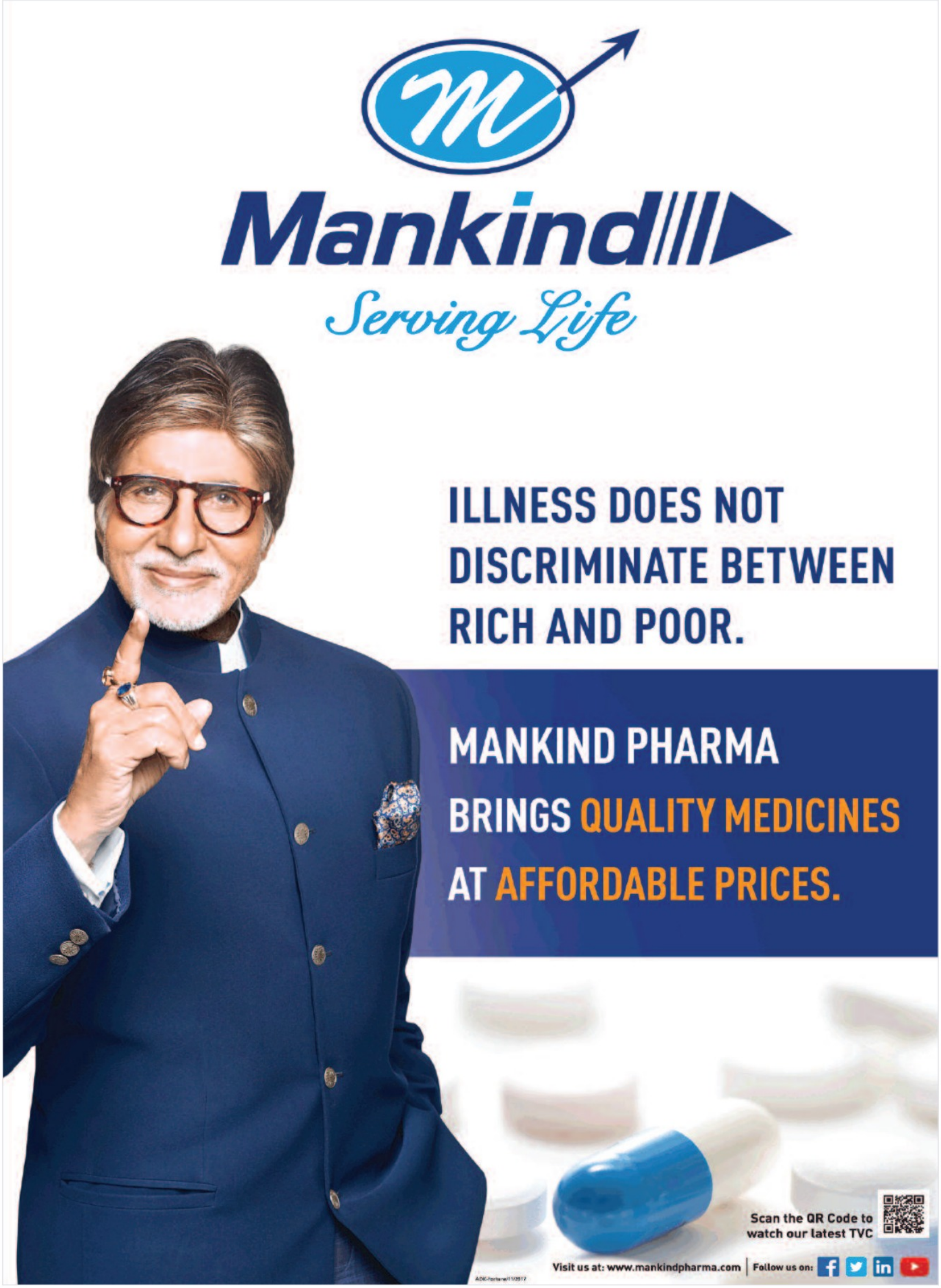
JV: Laws are not static because society is not static. But there are concepts of the basic elements of a free society. The government is a potent teacher. It teaches by its own example. Changes occur because the time of the idea has come; not because a leader wants it. But the pressure must come from the democratic form within society. If, as it said, the spirit of liberty is not in the hearts of the people, nobody can supply it. If it is there, nobody need supply it Any society which looks to the courts alone to protect its rights is a weak society.

Political discourse, all of us notice, has become crass. There is a deteriorating dignity and conspicuous lack of humour in political debate and discourse. Courts cannot order good conduct and order people to talk and behave in a particular way. It is something analogous to the debate on courts and morality. When an English judge said that there was no area of immorality which did not concern laws, a huge debate was unleashed. Hart-Devlin debate was one such.

SRS: You are a votary of Vedic values. Are these values and ancient cultural and spiritual traditions of India in sync with today's progressive ideas of human rights?

JV: I'm not a serious student of Vedic literature. But I'm amazed at the beautiful range and depth of Vedic concepts about the universe. It provides an inspiring look into what is phenomena and what is reality and the dichotomy between scientific truth, which is truth for the time being and reality.

Vedas engage you in breathtaking speculations about the irresolvable issues of man's spiritual quest and wonderment. Particularly challenging to human intellect is the speculation as to how the single undivided universal consciousness split into the cognisor, the cognized and medium of cognizance. To say it is the result of the operation of 'Maya' is virtually to admit that it is inexplicable. The destination of philosophical pursuits is not to embark upon an inquiry but to go beyond it. It is ultimate dissolution—not solution—to the problem. ■



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"GOOD GOVERNANCE IS TO RESPECT HUMAN RIGHTS"

Former Chief Justice and fifth chairperson of the National Human Rights Commission **JUSTICE S RAJENDRA BABU** is known for his initiatives against police brutality and capital punishment. His verdict in *Kishori vs State of Delhi*, delineating mob psychology, is noteworthy. Justice Babu spoke to **INDIA LEGAL** on a variety of human rights issues

India Legal: How do you react to the proposition that the National Human Rights Commission is a paper tiger and toothless body which needs to be empowered to make it function effectively?

Justice S Rajendra Babu: NHRC is a body without powers to make decrees or enforce its decisions. Hence, some people call it a "paper tiger". However, my view is different—

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“NHRC is a body without powers to make decrees or enforce its decisions. Hence, some people call it a ‘paper tiger’. However, my view is different—its role is not confrontational, but cooperative. The logo of NHRC depicts protection by covered hands and promotion by rising sun. Our culture is ‘*Vasudhaiva Kutumbakam* (The world is one family)’ and in the same strain, it is said ‘*Sarve Bhavantu Sukhinah* (May all be happy)’.”

its role is not confrontational, but cooperative. If all stakeholders are involved in the process of recommendations and good governance which needs adherence to human rights, much can be achieved. When children from Chhattisgarh were transported to Kashmir as prisoners by a contractor, I invoked the good offices of the two CMs, both belonging to different political parties, and they cooperated in getting their freedom. In Gujarat, after the incidents of 2002 many were dislocated from their places. While some wanted to settle down in their original place, others wanted to go to new places. Without going into the causes of the incidents, I sought the cooperation of the Gujarat government, which was extended wholeheartedly. The hallmark of good governance is to respect human rights, which all governments are aware of, but they need to be reminded often.

IL: You had said that in any emergency, the liberties of citizens can only be reasonably restricted and not trampled. Today, we see the misuse of laws such as UAPA and NSA, how do you feel?
Justice Babu: What I stated is the law of the land. If the laws are misused and rights are trampled, appropriate remedies are open to aggrieved parties.

IL: As NHRC chairman, you had worked on developing new jurisprudence to tackle police brutality. You have also been in the Commission to inquire into custodial deaths, encounters and police excesses. As cases of police brutality are ever rising, what should be the role of NHRC? What needs to be done to curb police excesses?
Justice Babu: What needs to be done need not be overemphasised by me. Respective governments or their authorities should cooperate with NHRC. However, you may recall the public uproar in several cases which called on authorities to render rough and ready justice when both the government and the police are under tremendous pressure and sometimes yield to it also. Those stray cases cannot become examples of violation of human rights.

IL: As former head of NHRC, you paid special attention to the protection of economic, social and cultural rights. What were your major initiatives and how much continuity of effort and progress do you see in those areas?
Justice Babu: It is only those who are socially, economically and culturally backward that come into conflict with law and need the protection of NHRC. I developed an easy system of recording complaints, made either orally, by phone, e-mail, in writing or otherwise. Action would be taken on such complaints. ▶

"In Gujarat, after the incidents of 2002 (right) many were dislocated from their places. While some wanted to settle down in their original place, others wanted to go to new places. Without going into the causes of the incidents, I sought the cooperation of the Gujarat government, which was extended wholeheartedly."

IL: **Today, there is a debate on death penalty. The Supreme Court has referred to a larger bench issues relating to procedural norms for imposing the death sentence. As a former NHRC chairman, what are your views on death penalty?**

Justice Babu: The General Assembly of the United Nations passed a resolution to abolish the death sentence and many countries adopted it. So, I brought it up for discussion to make appropriate recommendation to the government, but unfortunately, consensus could not be achieved and so I referred it for further research.

"The UN General Assembly passed a resolution to abolish the death sentence and many countries adopted it. So, I brought it up for discussion to make appropriate recommendation to the government, but consensus could not be achieved and so I referred it for further research."

IL: **You gave the verdict in *Danial Latifi vs Union of India* wherein you reworked the maintenance amount in favour of Muslim women. Over the years, many judgments have been given in favour of Muslim women. Now the issue of Uniform Civil Code is being raised. How do you see this issue in the context of rights of Muslim women? Will it promote their emancipation?**

Justice Babu: The Uniform Civil Code is a highly controversial issue. India being secular, several religions coexist. A great deal of balance with respect to different religions has to be maintained. For example, the Hindu Undivided Family is peculiar to Hindus; can that status be abolished overnight?

IL: **You have an abiding interest in Vedic knowledge. In the logo of NHRC it is embossed: *Sarve Bhavantu Sukhinah*. How do Vedic values promote human rights?**

Justice Babu: The logo of NHRC depicts protection by covered hands and promotion by rising sun. Our culture is "*Vasudhaiva Kutumbakam* (The world is one family)" and in the same strain, it is said "*Sarve Bhavantu Sukhinah* (May all be happy)". No equivalent is possible to say "*sukha*". *Sukha* is not mere happiness, but includes peace, tranquillity and prosperity. ■

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In an unprecedented development, the Supreme Court has taken the government to task over the appointment of Election Commissioners. This comes in the wake of the government's criticism of the collegium system of appointing judges. Does this signal a new clash between the two arms of the government?

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"NATIONAL HUMAN RIGHTS COMMISSION IS A POOR MAN'S COURT"

Former chief justice of India and sixth chairperson of the National Human Rights Commission **Justice KG Balakrishnan** is known for his significant initiatives at the grassroots level. In an interview with **India Legal**, he makes a case for more effective state commissions

India Legal: **The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, was enacted by Parliament to prevent atrocities and hate crimes against the Scheduled Castes (SC) and Scheduled Tribes (ST). Despite the strict penal provisions in the Act, atrocities against Scheduled Castes and Scheduled Tribes are continuing. How serious is the problem? Furthermore, convictions in ST/SC cases are low and pendency is high. How do you see the whole issue?**

Justice KG Balakrishnan: Well, if the police is not registering the case, the National Human Rights Commission (NHRC) can see that the cases are registered against the concerned persons.

NHRC ensures that the compensation is paid to the victim. The Commission also ensures that direction is given to the police for effective and timely action on complaints. As regards the pending court cases, NHRC cannot give any direction.

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महारैली

> "Reservations are not permanent. Reservations are put in place to improve the living conditions of the people who are neglected, oppressed and socially backward. Once their social status and economic status improves, there is no need for reservation. However, the problem is that it is not likely to happen in the near future."

NHRC has no role in matters pending in court, so it doesn't interfere in cases where the matters are *sub judice*. I concur that conviction rate is less and many time when the case reaches the final stage, the oppressor tries to influence the complainant or the witnesses which affects the case. This is the main reason for the low percentage of conviction.

IL: Recently, the Supreme Court had delivered a fractured verdict on reservation for Economically Weaker Section (EWS). Will EWS reservation cut into SC/ST rights?

JB: Normally, EWS reservation should not affect the reservation of SCs/STs because though they are economically weaker sections, they are excluded in that particular category. That is why the two judges have taken a different view, holding that it is not in consonance with the basic structure of the Constitution.

Reservations are not permanent. Reservations are put in place to improve the living conditions of the people who are neglected, oppressed and socially backward. Once their social status and economic status improves, there is no need for reservation. However, the problem is that it is not likely to happen in the near future.

IL: Hate Speech is increasingly getting virulent and is seen as a human rights violation. It is inciting discrimination, hostility and violence towards a person or a group defined by their race and religion. Recently, the Supreme Court asked police officers to take *suo motu* cognisance of hate speech offenders. What can NHRC do about hate speech?

JB: Hate speech is a sad thing, but many are overreacting, that is the problem. Sometimes, comments are malicious and harmful and then there is cause for concern. If someone indulges in hate speech and creates a havoc that is not proper. If someone is slandering other religion or doing something against the interest or sentiment of other religious community then it can be a source of concern and conflict.

IL: You had been the sixth chairperson of NHRC and the longest serving chairperson, too. During your tenure, you had taken many significant initiatives as chief of NHRC. Do tell us about it.

JB: When I joined NHRC, we were getting large number of complaints, and we kept disposing these complaints. Later on, I realized the real problem is that many violations of human rights happen in the countryside . So, we did a survey. We went to various states. We went to Chhattisgarh, Rajasthan, Madhya Pradesh, Maharashtra, Andhra Pradesh and various states in the Northeast. We studied the problem at the ground level.

Then we organized camp sittings to receive petitions and hear the parties on the spot.

After the discussions used to get over in the sittings, we used to call upon the con- ▶

“The state human rights commission can also be effective as they know the problems more directly. They can deal with officials better. Thus, violations can be easily redressed by the state commission, but they should appoint a proper candidate and see to it that the commission is effective.”

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cerned secretaries of the government and the chief secretary. We used to inform them about the ground level realities and problems faced by the people. We always found the chief secretaries and other secretaries to be very cooperative. They complied with our suggestions. It was a very successful operation. In some states, more than 200 petitions were received. We got translated all the petitions from the local language and we heard them.

People realized that a single direction given by NHRC will solve their problems. The poor and people from rural areas can’t go to the court as it is an expensive affair. They have to engage a lawyer, pay court fees, etc., which is beyond their means. NHRC is actually a poor man’s court. So, everybody realized that grievances can be redressed by NHRC and it can be effective. NHRC is a wonderful organization and big enough to cater to the needs of the people. There are a large number of dedicated employees. If there is a good leadership, the Commission can certainly help people.

IL: How do you see the status of state commissions? Many state commissions are without chiefs. How much coordination exists between NHRC and the state commissions? Why are appointments not being made? How can the NHRC push more for appointments?

JB: The state commissions are not working under NHRC. At some levels, the state commissions are not very effective. Suppose the chairman retires and for a long time, they don’t appoint a chairperson or members, then what ?

Every year, more than once, the state commissions meet in Delhi with NHRC members. Occasionally, there is an interaction between the state commissions. NHRC will not interfere in matters under the purview of the state commissions unless it is crucial.

Of course, the state commission can also be effective as they know the problems more directly. They can deal with officials better. Thus, violations can be easily redressed by the state commission, but they should appoint a proper candidate and they should see to it that the commission is effective.

IL: What sort of organizational change if any, should be done at NHRC to make it more functional and effective?

JB: During my time, there was a proposal to start human rights courts. We did take steps to institute human right courts, but in many states, some of that power is vested in one of the district judge cadre officer. But, there could be separate human rights courts as envisaged in the Protection of Human Rights Act, 1993. Though implementing it is not that easy. I know because we have tried it.

It is said that NHRC is a recommendatory body, and hence, not too effective. This is not correct. Even though it is a recommendatory body, 99% of its recommendations are complied by the states. The Commission should keep watch and see that the orders are implemented and get the police officers for conducting investigations so that the inquiry could be conducted effectively and a report is sent to the commission. All states are very cooperative. During my time, I didn’t find any difficulty in this aspect. ■

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THE LONG AND LONELY ROAD

The president has urged that the increasing number of undertrials be tackled. The solution lies in a criminal justice monitoring board to track the progress of criminal cases and sticking to CrPC timelines

By Justice Kamaljit Singh Garewal

My hair is grey, but not with years,
Nor grew it white
In a single night,
As men's have grown from sudden fears:
My limbs are bow'd, though not with toil,
But rusted with a vile repose,
For they have been a dungeon's spoil,
And mine has been the fate of those
To whom the goodly earth and air
Are bann'd, and barr'd—forbidden fare

—from "Prisoner of Chillon" by Lord Byron, 1816

OUR gulag-like system of criminal justice makes thinking men squirm, while the poor sods wait endlessly for trial as they tread through the long, labyrinthine, tortuous corridors of an overcrowded prison system.

A growing prison population may be a good sign because it shows undertrials are getting convicted and sentenced. But unfortunately, the prison population of undertrials is disproportionately high, and rising. This must be seen as increased incarceration of those whom the law presumes innocent. This is not a sign of a healthy criminal justice system. Rather it shows denial of the constitutional promise of right to life and

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WELCOME INTERVENTION
President Droupadi Murmu, while delivering the valedictory address at the Constitution Day function, had expressed her concern over the large number of undertrials in prisons for long periods

liberty, to which the right to a quick trial is integral.

Over the past two decades, the proportion of undertrials in prisons has been a constant 70% and above. A national shame for which no one institution can be blamed. But if this anomaly is examined in detail, one shall discover that it is a systemic failure of the entire criminal justice system of India. Undertrials in custody must be convicted quickly or released on bail or finally released when the prosecution fails to prove their guilt.

But the old fashioned conservative, neo-colonial reply is—Why did the wretch break the law? He deserves what he has got. If nothing is done soon to cure the malady, it shall be seen as our national policy too. But the liberal, constitutional principle says to the prisoner: "You are presumed to be innocent, your right for a quick trial is secure, the State shall soon present the evidence before the court and prove the offence committed by you, you shall have full opportunity to defend yourself"

Who is answerable for long detention of persons who are ultimately acquitted by the trial court after long, protracted trials? Too little has been done when so much concern has been shown by the managers of the criminal justice system, of which the prison is the last destination. And when we say the "law shall take its course", don't we know that it is a long, bumpy, winding course to nowhere?

President Droupadi Murmu, as the First▶

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Citizen, expressed her serious concern over the large number of undertrials in prisons for long periods. She was delivering the valedictory address at the Constitution Day function organised by the Supreme Court. She may as well have said what the guard remarked in Shakespeare's *Hamlet* after the ghost of the dead king appeared walking over the palace walls—"Something is rotten in the State of Denmark."

The president directly addressed the Judiciary and indirectly reached out to the thousands of judges of criminal courts in this vast country. President Murmu described her own experiences as the Chair of Home Standing Committee in Orissa, which gave her the opportunity to visit jails in her state and see the conditions of people incarcerated there. She said she gave suggestions to the authorities, but only a few were implemented.

As governor of Jharkhand, she also felt very concerned about those in jails, many of whom had been there for 10, 15, 20 years for small crimes. She felt that something must be done for them. Most did not know their fundamental rights or fundamental duties. The prisoners had been in jail for long years, waiting for trials to decide their guilt or innocence in cases of minor offences. Many didn't want to leave jail because they felt ashamed of the stigma that would stick to them on release. Many families wouldn't get them released because they didn't have the means. Something had to be done about the small people in prison who were inside for long years for minor disputes. The president very correctly did not castigate the system, but said that everyone in the audience understood what she meant to say. This remark was followed by long applause.

In a frank, polite and humble way, the president wanted action for the small people and was surprised that more jails were being constructed, whereas the need actually was to empty them of inmates. The lines of Lord Byron quoted before are exactly the sentiments expressed by President Murmu. She seemed to be saying that undertrials wanted action, not hollow words and meaningless platitudes.

So where should the action come from? The prime minister has too much to look after, from navigating foreign policy through stormy seas of international conflict in Europe, assuming presidentship of G-20 countries, facing disputes with neighbouring countries, guiding economic policies, trying to improve relations with other regions.... His office is staffed with experienced administrators, diplomats, economists and police officers. There is too much work to spare the time to care about the plight of ordinary people in prison awaiting trial.

The home minister is no less busy, tackling internal security, external threats, terrorism and much else. It is the home ministers of states who really matter as far as the poor sods are concerned, criminal law and procedure being concurrent subjects. Often, the state home department is also the responsibility of justice ministers of states.

Now coming to the minister for law and justice of India who holds the most important portfolio concerning criminal justice. It seems he too has little time because appointments of judges keep him too busy. The minister must ponder over our collapsing system from the point of view of the victims. The victims are the complainants and the accused persons. The minister must work towards reform of the system to ensure due compensation to the complainants, to reduce the time taken in criminal trials, to reduce the number of undertrials in jails and to increase the rates of convictions. The minister should place on the floor of the Lok Sabha a quarterly or annual statement on the performance of the justice system, particularly the criminal justice system. And what his proposals are to reduce the undertrial population and increase conviction rates for different types of criminal cases.

As a nation, we must shed our ostrich-like attitude towards undertrials and look at the damage their long stay in prison does to them if they are ultimately acquitted. Many lose their jobs and savings, have to dispose of property, families have to live under the shadow of a member in jail, children may be teased at school and lose interest in studies and teenage children may become delinquent.

A good way ahead would be to have a full time state criminal justice monitoring board under the aegis of the State and District Legal Services Authorities, but as a separate well staffed entity. The task assigned to the monitoring boards can be to keep a detailed track of the progress of criminal cases. Criminal trials take long because the prosecution takes too long to lead evidence. There are clearly defined timelines in the code of criminal procedure for various steps. For example, every arrested person must be produced before a magistrate within 24 hours. In this way, the moment a person is detained and denied liberty, he comes under judicial protection. After this, the criminal procedure code kicks in. The investigation must be completed and the final report filed within 90 days, failing which the arrested accused is released on bail. Trials once commenced must continue on a day-to-day basis. This is what Section 309 of the CrPC requires. There is no answer why this never ever happens. There is also no answer why no one steps in to make prosecutors accountable for such monumental lapses.

The monitoring board shall be able to monitor the day-to-day progress of each and every trial. This would be enough to make trials courts follow the law. Another major reform to block the harmful effect of prisons on undertrials would be to completely separate convicts from undertrials. The former to be kept in correctional institutions and the latter in detention centres. Undertrials must be convicted before being sent to prisons. During trials, they should be kept in special detention centres within the court premises and under the superintendence and control of the sessions judges and away from hardened criminals.

Holding Lok Adalats in jails for petty offences, releasing persons against whom investigators find no evidence, immediate release of women on personal bond, improving the quality of legal aid to accused are some of the other measures which must be introduced across the country to ameliorate the hardships of indigent accused.

In spite of the many safeguards which ensure quick trials, the due course that the law takes is long. As a nation, we lack the will and determination to put things right. And the blame must be placed at the door of the weak prosecution system dominated by unprincipled police. The former be strengthened, while the latter must be curbed and made accountable. If effective steps are taken in the above direction, trials shall conclude quickly and conviction rates will shoot up. Otherwise, it will be business as usual, while the undertrials continue to languish in prisons for years. ■

Holding Lok Adalats (above) in jails for petty offences, releasing persons against whom investigators find no evidence, immediate release of women on personal bond, improving the quality of legal aid to accused are some of the other measures which must be introduced across the country to ameliorate the hardships of indigent accused.

The writer is former judge, Punjab & Haryana High Court, Chandigarh and former judge, United Nations Appeals Tribunal, New York

Shantanu Mitra

PRISONS, A GANGSTER'S PARADISE

Gangsters of north India have realised that the safest place for them to be is inside the prison. The prisons have become business hubs for such criminals as everything that is required to run their rackets are available inside at the "right price". To counter this, authorities are planning to shift them to jails in south India

By Dr Swati Jindal Garg

GIVING new meaning to the phrase "power lies within!", the gangsters of north India are showing how easy it is to run their operations from the safe sanctuary of prison walls. In a recent interview conducted, a gangster, who wished to remain anonymous and is part of a ring operating in the National Capital Region (NCR) revealed how procuring illegal firearms in Delhi is easy as suppliers bring them weapons from MP, Bihar, etc., and hand them over in the capital itself. He also disclosed how the prisons have become "business hubs" for such criminals as everything that is required to run a racket is readily available inside at the "right price". "A mobile phone, among other things, can be procured in jail for Rs 50,000 to 60,000. All gang leaders have their henchmen outside and they stay in contact. Phones are used to extort money, demand protection money, and threaten businessmen or property dealers," he said. He also went on to say that jail is a place where many gangsters feel safe as they will not come on the radar of their rivals or police. Moreover, the jail administration and security personnel are also in cahoots, said the outlaw.

Corroborating his story, the National Investigation Agency (NIA), the country's primary counter-terrorist task force, in a shocking revelation, as part of its crackdown on the gangster-terrorist nexus syndicate operating in India, has identified several such gangs whose kingpins have been found operating from inside the jails as well as overseas.

Based on the information received by the Special Cell of Delhi Police, the NIA has till now, registered two FIRs against such gangs under Section 18 (Punishment for Conspiracy), Section 18-B (Punishment for Recruiting Any Person or Persons for Terrorist Act) and Section 20 (Punishment for Being a Member of Terrorist Gang or Organisation) of the Unlawful Activities (Prevention) Act or UAPA and Section 120-B (Criminal Conspiracy) of the IPC. After conducting three rounds of raids at around 80 locations in Punjab, Haryana, Rajasthan, Uttar Pradesh and Delhi as well as in the Union Territory of Chandigarh, it was found that the premises covered belonged to gangsters like Canada-based Goldy Brar, who has been detained in the US, Neeraj Bawana, Lawrence Bishnoi, Sunil Maan *alias* Tillu Tajpuriya, Kala Jathedi, Jitender Gogi and their associates.

The NIA has also clarified that all these gangsters, in collusion with their associates, have been running their operations from different jails in India as well as from Canada, Dubai and Pakistan. The agency also revealed that the goons are now procuring high-end weapons from outside the country and planning to start targeted killings in India in order to strengthen their hold and spread panic. Most of these gangsters are also associated with absconding terrorists and hence their nexus with other terrorist groups cannot be denied.

Such a criminal-drug-peddler-terrorist nexus is not a new phenomenon. It has been there for a long time and is now gaining ground particularly in the context of India-Pakistan and Israel-Palestine. This nexus was first started in India by Pakistan's Inter-Services Intelligence (ISI) in the early days of Punjab terrorism as "Operation Topaz". Due to the absence of fencing on the borders in those early days, several people who inadvertently crossed over the borders due to lack of clarity were arrested and forced to either convert or become terror mercenaries to hit Indian interests. Later on, the ISI started hitting from within the Indian borders by using the Mumbai-based underworld dons, and the result was the ▶

The National Investigation Agency, in a shocking revelation, as part of its crackdown on the gangster-terrorist nexus syndicate operating in India, has identified several gangs whose kingpins have been found operating from inside the jails as well as overseas.

In the light of the fresh evidence that has unfolded, NIA's proposal to the Union Home Ministry regarding shifting of gang leaders to prisons in south India lists 25 gangsters. According to sources, the names include (from left) Lawrence Bishnoi, a key accused in the murder of Sidhu Moosewala, Neeraj Bawana, Tillu Tajpuriya and Kala Jathedi.

Mumbai blasts in which Dawood Ibrahim was found to be the main accused. Security agencies have also recently observed the illegal entry of 191 drones into Indian territory from Pakistan which has again raised major concerns in terms of internal security within the country.

The latest modus of operating from within the prisons seems to be the "third wave" of the same ISI machination. However, to the relief of the authorities, the agencies in India appear to have received some information beforehand, hence are taking strict action in terms of forewarned being forearmed. The process can be said to have started with the permission that was granted due to the Indian government's decision to allow blacklisted Khalistani operatives to enter India after which several of them came back to India from the US, Canada, Germany and a few other countries and started indulging in terror conspiracies.

Now, in light of the fresh evidence that has unfolded, the NIA has written to the Union Ministry of Home Affairs proposing to shift most of these gang leaders to prisons in south India, starting with the names of 25 gangsters that have been recommended for transfer. Sources have been known to say that these names also include top gangsters like Bishnoi—who is a key accused in the murder of Sidhu Moosewala—Bawana, Tajpuriya and Jathedi.

One of the primary reasons for shifting these gangsters who have been found to be operating smoothly from inside the jails, has been that they would at least have to face the language barrier if they are shifted to south India, thereby making it more difficult for them to operate smoothly. Most officials, however, feel that this move will only grant them a short term respite and might even prove to be counter-productive in the long run as there is the impending danger of these criminals fostering new linkages with highly radicalised operatives of ISIS and PFI who are active in south India. This transfer would then prove to be a catalyst in spreading the disease of these activities.

Then, there are also the problems related to coordination between the centre and the state agencies while shifting the gangsters from one state to the other. In this regard, the NIA is coordinating with the police in Punjab, Haryana, Rajasthan, Delhi and Uttar Pradesh, and they are all, as per the statement of an NIA official, cooperating in sharing information and during operations.

The NIA has also stated that in the recent sensational crimes and extortion calls by criminal syndicates and gangsters to businessmen and professionals, including doctors which created widespread scare, cyberspace was being used by these gangs to publicise these crimes and create terror among

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There are coordination issues between the centre and state agencies while shifting the gangsters from one state to the other. In this regard, the NIA is in touch with the police in Punjab, Haryana, Rajasthan, Delhi and UP, and they are reportedly cooperating in sharing information and during operations.

the public at large, an intention in which they have also succeeded beyond expectations. It has also been found that there was a deep-rooted conspiracy among terrorists, gangsters and drug-smuggling cartels and networks, who were operating from both within and outside the country, to ensure that these plans succeed. Many of the gang leaders who had fled from India are now operating hand-in-glove with those who are settled within the safe confines of jails in India and hatching conspiracies from inside the jails of different states in collusion with an organised network of operatives based abroad. The gangster-terrorist nexus supports each other in the sense that gangsters extort money, and for that they need protection which then is provided by the terror groups.

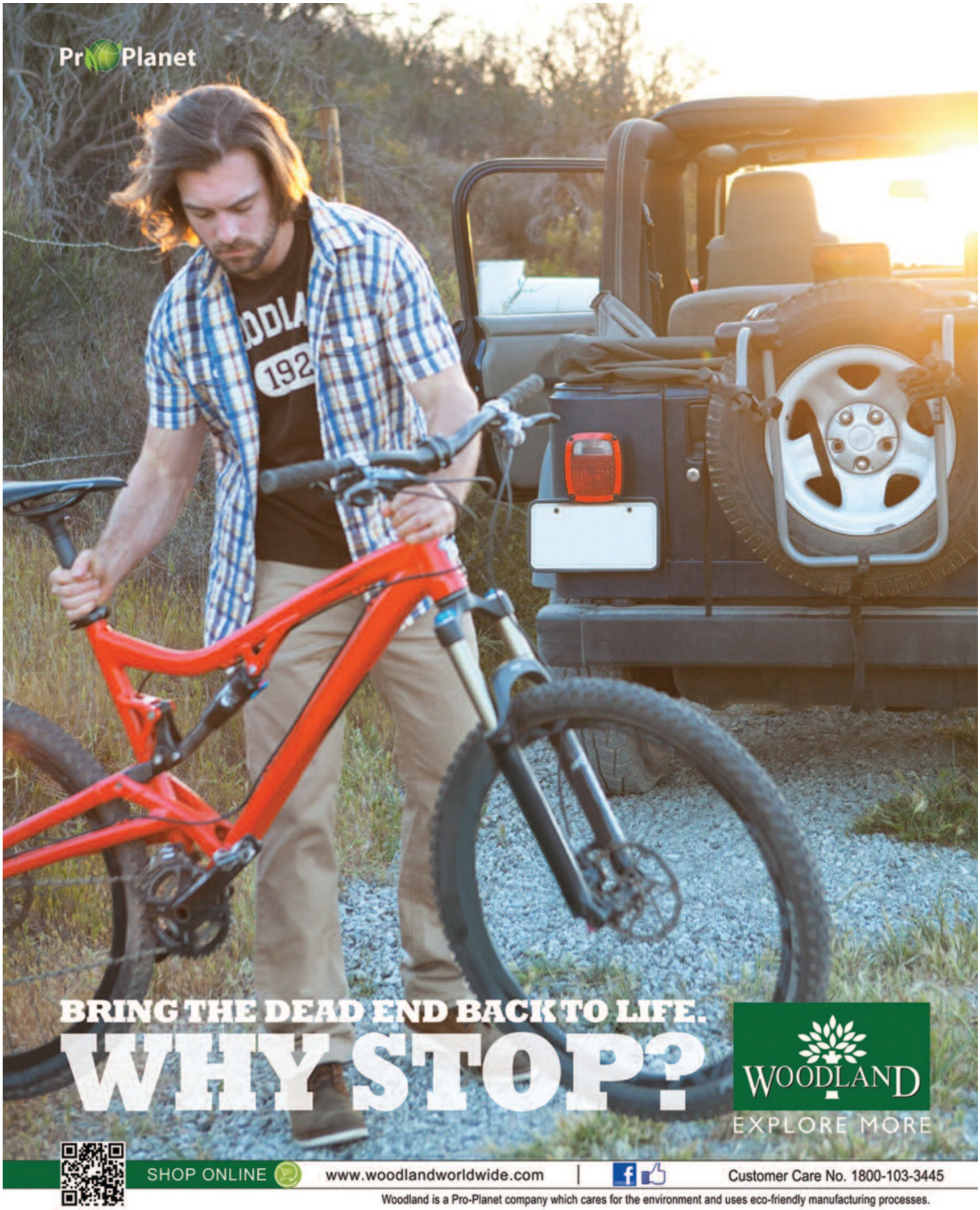
These criminals have been operating in a manner that spreads the maximum amount of panic among the people. The targeted killings of popular singers like Moosewala are examples of how by ensuring that their acts are made the front page news, the criminals also make sure that they take the maximum benefit of the resulting panic.

According to the NIA, in the instant case, a conspiracy was being hatched by the members of a criminal syndicate/gang based in India and abroad with an intention to raise funds, recruit youth to carry out terrorist acts in Delhi and other parts of the country and these members were further planning to execute heinous crimes, including but not limited to targeted killings of prominent persons, in order to strike terror in the minds of the people of the country. The NIA had also during one of the hearings informed the court that during the police custody examination of the accused Bishnoi, who is the main accused of this case, it has been found that he operates gangs/syndicates to commit terrorist acts in India with the intention to strike terror in the minds of the people.

The life of criminals is such that once they become a part of the trade, going back to normal life no longer remains an option for them. During the course of their life, they make so many enemies, both among the police and rival gangs, that they also fear for their own lives. Revenge is always in play, so the safest place for them is to be inside the jail and operate from there.

Breaking this jail-operated nexus is going to be a tough ask, but the way the NIA is bent upon cracking this case, shifting the gangsters to the south India might just be what is required to break their back! ■

The author is an Advocate-on-Record practising in the Supreme Court, Delhi High Court and all district courts and tribunals in Delhi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LOVE AND DEATH

The gruesome murder of Shraddha Walkar by her live-in partner Aftab Poonawala has shocked the nation and led to questions about relationships and domestic violence. What does the law say and what can others do in a similar situation?

By Shaan Katari Libby

PAYING FOR IGNORANCE
Shraddha Walkar could have been protected by the law even though she was not married to Aftab Poonawala

WE have all been living through the grisly details of the brutal long-drawn-out torture and murder of a young lady Shraddha Walkar at the hands of the person who was supposed to love and care for her. It is tragic; a horrible waste of a young life at the hands of a psychotic killer. What makes this particular case more sad is that the police had the opportunity to do something—as did her friends and family—and yet nobody did. We will examine here what the law says on domestic violence and what society can do to help those experiencing it. Finally, we will look at practical steps that you can take should you ever be in such a position.

The law on domestic violence applies to both spouses as well as live-in partners as of 2005. There was an unfortunate comment made by someone in government recently about how women should not live with people before marriage. This is wrong in so many ways—to begin with, marriage does not protect you from domestic violence—in fact, it makes it harder to disentangle yourself and one in three women in India experience domestic violence within marriage. Also, the reason couples live together before marriage is often to have a better chance of a successful marriage.

As per the Protection of Women from Domestic Violence Act, 2005, (hereafter "the Act") any act, omission or commission or conduct shall constitute domestic violence if it "harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical". This includes physical abuse, sexual abuse, verbal and emotional abuse, and economic abuse. Also, if anyone harasses, harms, injures or endangers the victim with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or has the effect of threatening the aggrieved person or any person related to her; or otherwise injures or causes harm—physical or mental.

It is to be noted that domestic violence does not have to involve bruises or wounds to qualify. Hence, in Shraddha's case when she went to see the doctors with internal injuries, the repeated statement in the media that she had no external wounds is irrelevant and an unnecessary distraction. The internal wounds should have been enough to raise the red flag. She should never have been sent back home.

In fact, a victim under this Act does not need any "physical wounds" at all—not internal or external. It could have been mental injury—constant verbal abuse or insults or torments—or even economic abuse like withholding spending money or not "allowing" a woman to work. Also, it is to be noted that the abuse can be by family members. In the society we live in, there are in-laws who often tend to dominate the household, and it can be them who are charged with domestic violence just as much as their son.

Shraddha had written a letter to the police explaining in detail the abuse she suffered, her fears, and Poonawala's (above left) threats to do exactly what he did subsequently. But the police did not get in touch with her as per the law.

Could Shraddha have been protected by the law even though she was not married to Poonawala? Yes. The 2005 Act provides equal treatment. This was reiterated in *Lalita Toppo vs the State of Jharkhand and Anr.* (2018) involving a live-in relationship and a child. The Gumla family court granted the appellant's request for support when the couple separated, granting her Rs 2,000 per month and Rs 1,000 for her child. The High Court reversed the decision. The Supreme Court then heard it. The issue was whether a live-in partner can file a maintenance claim under the 2005 Act. The Court said a live-in partner would be entitled—the then Chief Justice of India Ranjan Gogoi and Justices UU Lalit and KM Joseph stated that she would have a remedy to seek maintenance under the Act. The Court further noted that, in accordance with the Act's provisions, economic abuse is also considered a form of domestic violence.

What can society do? We as a society are very curious about others' lives, yet when it comes to something like domestic violence, most take a step back and say it is none of our concern. This is unfortunate as lives ▶

Under the Domestic Violence Act, any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned protection officer. The person will not be made legally liable for providing such information.

can be saved or transformed if those around put their collective foot down against such behaviour and assist the victims. It would also send a strong message to other aggressors that it will not be tolerated. In this particular case, it would appear that the parents condoned such behaviour by their son!

Had there been acceptance of the relationship by the parents of Shraddha, this murderer would never have been able to take her away to another city far away from her family. The fact that the parents tried to fight this relationship due to a person's religion meant that they lost touch with their precious daughter and could not protect her. Her friends, too, knew what was happening via messages, but did not know what to do about it. So many opportunities were missed.

Domestic abuse helplines and resources

- If you are experiencing domestic violence, call 112.
- Swayam (91 98307 72814) is a feminist organization committed to advancing women's rights and ending discrimination and violence against women and girls, based in Kolkata. NARI website lists helplines and One Stop Centres, free legal aid available to women throughout the country.
- Operation Peacemaker might be useful if the signs are there of domestic violence…this aims to reduce domestic violence in India through thousands of peacemakers who are trained in family and marriage counselling. (domestic violence helpline: 1800 212 9131).
- The Aks Foundation (+91 8793 088 814) provides support to victims, from all over the country and abroad, of abuse and violence in order to empower them to become survivors.
- The Ministry of Women and Child Development works to ensure the protection of women's rights and lists One Stop Centres which provide an integrated range of services to women affected by violence. These services include medical aid, police assistance, legal aid/case management, psychosocial counselling and temporary support services. Women in distress can reach the Centres physically or over the phone. One Sakhi Centre is to be set up in every district of India.

Under Section 4 of the Act, any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned protection officer. If it turns out that there was no domestic violence here, there is no liability, civil or criminal, on the informant as it is in the interests of society for concerned persons to give such potentially crucial information in good faith.

Once reported or a complaint has been made, as per Section 5 of the Act, a police officer, protection officer, service provider or magistrate who has received such a complaint of domestic violence or is otherwise present at the place of an incident shall inform the victim of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under the Act. Also, of the availability of service providers, protection officers, her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987), and her right to file a complaint under Section 498A of the Indian Penal Code (45 of 1860) should she wish to.

This Section states that if a husband or relative of the husband subjects such woman to cruelty, he or the relative shall be punished with imprisonment for up to three years and fined. "Cruelty" here means any wilful conduct likely to drive the woman to commit suicide or to cause grave injury or danger to life or health (mental or physical) of the woman; or harassment of the woman with a view to coercing her/a relative to meet any unlawful demand for property or valuable security.

So, from these statutes can one surmise that there are protections in place for those being abused in domestic relationships? Absolutely. Should friends/family/loved ones stick their noses into other peoples' relationships? Without hesitation. Why? Because it could save a life.

Going back to the series of failures by the police in Shraddha's case...a letter of complaint was bravely written and sent in by her to the police explaining in detail the abuse

she suffered, her fears and Poonawala's threats to do exactly what he did subsequently. This was received in 2020, but did they contact her and inform her of her rights as they were meant to have under Section 5? No. What did they do in their wisdom? They contacted the parents of the perpetrator! This adult woman was not considered worthy of being spoken to directly—instead her abusive boyfriend's parents were brought in. And (not) surprisingly they weighed in in favour of their boy and convinced this girl to sign to the effect that all was well. If this is not patriarchy in all its glory one wonders what is.

Colleagues or neighbours, if you hear shouts, threats, abuse, or notice a young lady with bruises or bruised children, should you mind your own business? Absolutely not. Contact the police, just email them, write to them and drop it off, mail it in...whatever works, send it in anonymously if you wish, but complain and keep a record so that they have to act. With all the press this case has got, they are busy trying to find clues and weapons, but it is too little too late. The girl is dead and the man has confessed—all the rest is just window dressing.

The media reporting on these matters has been dismal and this includes even the better channels. They should be doing more in-depth analysis on what the law says and what society should have done—for instance had the police done their job in 2020 how she would have had a protection officer and an order from the court preventing Poonawala from coming anywhere near her. They could also usefully give no airtime to further information on body parts as it is not adding any value to anyone.

Finally, if you are a victim of domestic violence—verbal or physical or emotional or economic—despite the poor response of the police in this case, it is important that you extract yourself from the situation. So, if you do have a loved one, you can go to, do it. And never be persuaded to return, because once an abuser always an abuser—no matter how charming or persuasive.

Here is some food for thought—domestic abuse statistics from the Ministry of Women and Child Development show that 37.2% of married women in India have experienced spousal violence, yet only two percent sought help from the police, and about half of the women ended up in hospital.

A higher proportion of women, compared with men, find wife-beating justifiable under some circumstances, probably owing to the patriarchal mindset. There is one dowry death in the country every 78 hours, one act of sexual harassment every 59 minutes, one rape every 34 minutes and one act of torture every 12 minutes. The International Center for Research on Women in multiple centres in India reported that 85% of men admit violent behaviour against their wives at least once in the last 12 months, 57% of men admitted to have sexual abuse with their wives, 32% of men admitted to committing violence on their pregnant wives.

We need to get this down to zero—however distant that dream may appear. It is possible. ■

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The writer is a barrister-at-law, Honourable Society of Lincoln's Inn, UK, and a leading advocate in Chennai. With research inputs by K Sreya (Junior)

CASH STILL KING

Six years after the misadventure, people are still fumbling to find answers. With black money still in circulation, what was the purpose of the move? The government needs to explain

By Shivanand Pandit

WHEN the Modi government introduced demonetisation six years back on November 8, 2016, it had anticipated that it would wipe out at least Rs 3-4 lakh crore of black money. However, RBI data has disclosed that more than 99% of the money that was cancelled came back into the banking system. Meanwhile, fresh captures of black money persist.

Prime Minister Narendra Modi had appeared on national television then and said that all Rs 500 and Rs 1,000 currency notes would become worthless at the stroke of midnight. The broadcast at 8pm on November 8, 2016, led to almost 86% of the currency in circulation becoming untenable four hours later. The prime minister's

COLOSSAL FAILURE? The main goals of demonetisation are yet to be accomplished. Discussions still continue whether the note ban was a judicious move in the Indian economic context judgment amazed a few economists who debated that only about 5% of black money was hoarded as currency, while the balance was in the form of other assets such as real estate and gold.

The Modi government tendered a few economic reasons for this sudden move—flushing out black money, wiping out fake bank notes and generating a cashless economy by pushing for digital transactions. Among these objectives, the major one was blocking black money.

However, the question in most minds six years later is: has India accomplished any of the stated intents after demonetisation? History demonstrates that the route of demonetisation has been employed in several nations, be they developing or developed. While some nations have relished the success of it, other economies have failed as the move turned out to be a misadventure.

Several nations which faced huge challenges with black money and persistent circulation of fake currency notes introduced demonetisation as a remedy to such challenges. For instance, Germany in 1923 embraced demonetisation because of high domestic prices and racing inflation. The US opted for demonetisation to wipe out black money. Britain in 1971, Ghana in 1982, Nigeria in 1984, Myanmar in 1987, Zimbabwe in 2015 and the Philippines in 2016 too took this route.

However, it is an open secret that demonetisation did not achieve the goal of removing black money. According to the RBI data, virtually the whole chunk of money (above 99%) that was quashed came back into the banking system. Of the currency notes worth Rs 15.41 lakh crore that were nullified, Rs 15.31 lakh crore returned.

In the absence of latest assessments, it is hard to measure how much black money was recovered since the note-ban implementation. Former RBI governor Dr Raghuram Rajan revealed in his book *I do what I do* that he never backed the note ban and felt that its short-term influence could overshadow long-term benefits.

In February 2019, finance minister Piyush Goyal informed Parliament that Rs 1.3 lakh crore in black money had been recovered by way of several anti-black money processes, including demonetisation. However, the government had initially projected that at least Rs 3-4 lakh crore in black money would be removed due to demonetisation alone. Thus, data indicates that demonetisation was a failure in uncovering black money.

Demonetisation's intent to stop bogus bank notes appears to have come a cropper. The annual report of the RBI published on May 27, 2022, says fake Indian currency notes shot up by 10.7% in the financial year ending in March 2022.

Meanwhile, cases of black money capture continue at an alarming rate. In August 2022, the income-tax department declared that it unearthed black income of more than Rs 150 crore after it searched numerous business groups that run hospitals in Haryana and Delhi-NCR. Likewise, it unearthed hidden income above Rs 250 crore during raids against two business groups involved in the silk saree business and chit fund in Tamil Nadu. There are many such cases across India.

The government's decision to launch Rs 2,000 currency notes then was puzzling if it desired less cash to be available for hoarding black income. Afterwards, it launched electoral bonds, which became a process of bribing political parties in white. Thus realistically, demonetisation did not restrict the black economy.

The second intent of the plan—stopping bogus bank notes—also appears to have come a cropper. According to the annual report of the RBI published on May 27, 2022, fake Indian currency notes shot up ▶

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Has India accomplished any of the stated intents after demonetisation? Former RBI governor Dr Raghuram Rajan revealed in his book *I do what I do* that he never backed the note ban and felt that its short-term influence could overshadow long-term benefits.

by 10.7% in the financial year that ended in March 2022. The apex bank uncovered a 102% rise in bogus notes of Rs 500 denomination and more than 54% rise in Rs 2,000 denomination.

The RBI report disclosed that there was a rise of 16.45%, 16.48%, and 11.7% in bogus notes of Rs 10, Rs 20, and Rs 200, respectively, in the financial year 2021-2022. In 2016, when demonetisation was introduced, 6.32 lakh fake notes were seized across India and in the next four years, 18.87 lakh fake notes were seized.

Undoubtedly, digital payments have risen post-demonetisation. According to the RBI data, in October 2022, transactions executed through the Unified Payments Interface (UPI) touched a new high of Rs 12.11 lakh crore. In the financial year 2022, around 71 billion digital payments were recorded across India. This was a significant increase compared to the previous three years. UPI recorded strong gains, both in numbers and value, since 2015.

Although, a cashless economy was pitched as another gain of demonetisation, it is obvious that cash remains king in the post-note-ban years. According to RBI, currency with the public was Rs 32.10 lakh crore as on October 28, 2022, from Rs 17.7 lakh crore on November 4, 2016.

A large number of people believed that the aim of demonetisation was to erase corruption and black money. Only some sections thought it was introduced to promote Digital India and prevent tax evasion. Many are unclear about the aim of demonetisation. After six years, it is the responsibility of the government to clear the air on this economic move.

The main goals of demonetisation are yet to be accomplished. People still wish to deal in cash to a large extent despite the increase in digital transactions. This was especially so due to the ease of online transactions which increased during the pandemic and ensuing lockdowns. This shows that digital channels would have picked up even without the troublesome economic decision. Discussions still continue whether the note ban was a judicious move in the Indian economic context.

The move led to some ugly and tragic events as cash crunch took over. Some deaths were reported due to long queues outside banks and ATMs. The large informal economy faced a sudden and drastic disruption, creating a negative impact on gross domestic product. Demonetisation badly affected those who had nothing to do with black income generation, while those generating it, benefitted.

It is obvious that all-round confusion pervaded this move of the government. ■

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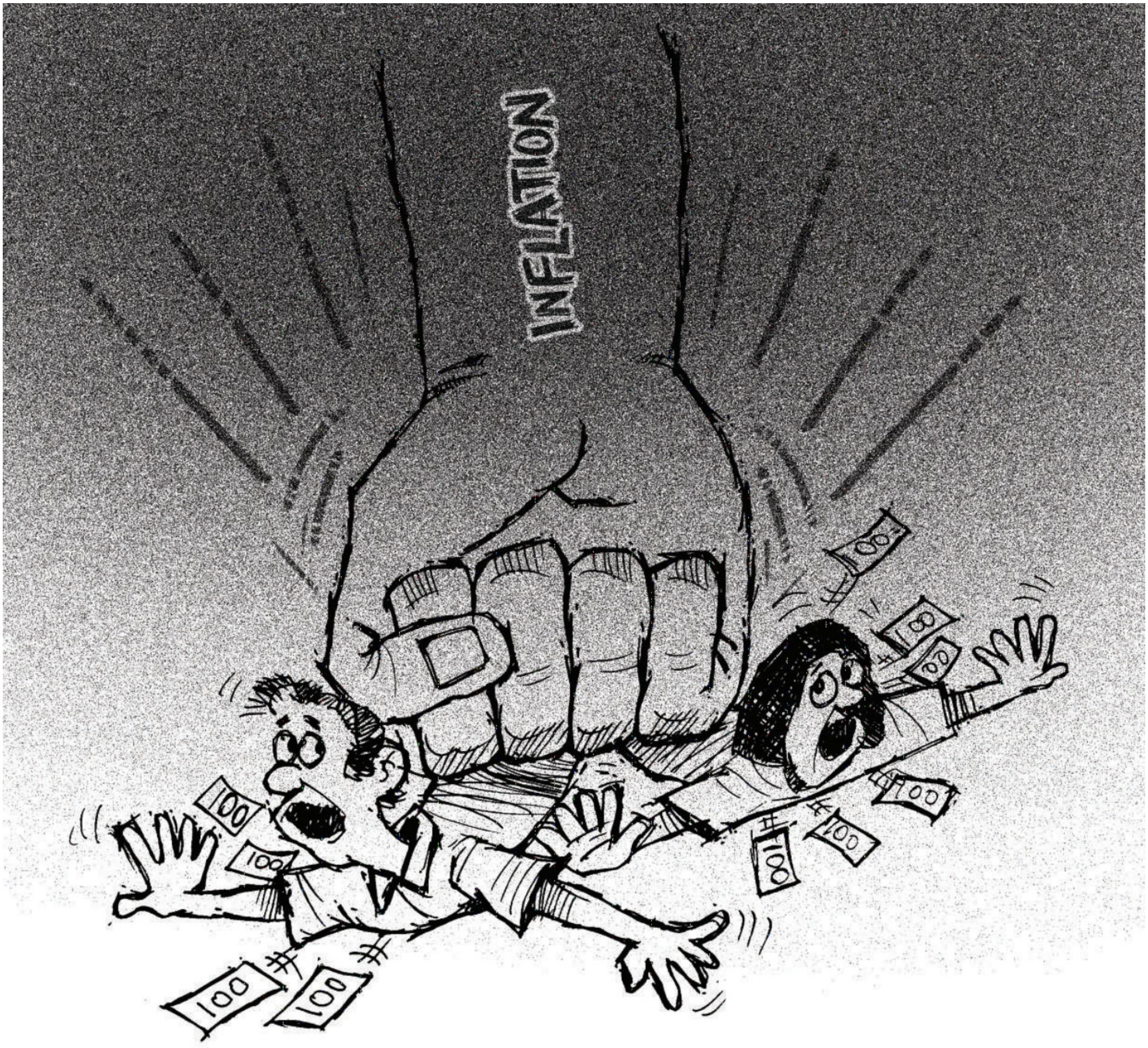
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